

INSPECTOR GENERAL ACT AMENDMENTS OF 1987

HEARING BEFORE THE COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 908

INSPECTOR GENERAL ACT AMENDMENTS OF 1987

MAY 12, 1987

Printed for the use of the Committee on Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1987

75-403

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

5401-46

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INSPECTOR GENERAL ACT AMENDMENTS OF 1987

TUESDAY, MAY 12, 1987

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m., in room SD-342, Dirksen Senate Office Building, the Honorable John Glenn, Chairman of the Committee presiding.

Present: Senators Glenn and Roth.

OPENING STATEMENT OF CHAIRMAN GLENN

Chairman GLENN. The hearing will be in order.

Today, the Committee focuses once again on the inspector general concept, and particularly on S. 908, legislation I introduced in April to amend the Inspector General Act of 1978.

In previous Committee hearings this year, we heard compelling testimony on the unqualified success of the independent offices of inspector general that are now established in 19 Federal departments and agencies. There is no doubt that these offices serve as an important internal check on government waste, fraud and mismanagement, and they aid Congress' oversight function by submitting to Congress invaluable information on the results of their audits and internal investigations.

S. 908, the Inspector General Act Amendments of 1987, would create new statutory inspectors general for the Treasury Department, FEMA, the NRC and OPM. Evidence presented at the Committee's February 19th and April 9th hearings amply demonstrated the need for such positions in the first three of these key Federal agencies. Today, we will hear similar testimony concerning OPM, the agency responsible for the multibillion dollar Federal retirement and insurance program.

S. 908 also seeks to strengthen the audit and internal investigation activities in about 70 smaller Federal agencies, boards, commissions and government corporations without creating additional statutory inspector general positions. Today's hearing will review and document the weak or non-existent internal review functions in these Federal entities, and provide the Committee with the opportunity to examine additional recommendations for fixing the problem.

Our witnesses on the subject of S. 908 include Joseph Wright, the Deputy Director of OMB and Chairman of the President's Council on Integrity and Efficiency, the umbrella organization for the in-

spector general community. Mr. Wright will provide the Administration's position on the bill. He will be followed by Sherman Funk, the Inspector General at the Department of Commerce, who will report on the PCIE's study of small agencies. John Adair, from the General Accounting Office, will also testify on the bill, and particularly its impact on the Office of Personnel Management.

Moreover, the Committee provided the heads of the Treasury Department, OPM and FEMA with the opportunity to submit written statements concerning their reactions to the bill. Statements received by the Committee from these agencies will be inserted into the hearing record.

Before we proceed I would like to place a statement by Senator Heinz, who could not attend this hearing, into the record.

[Senator Heinz' opening statement follows:]

OPENING STATEMENT OF SENATOR HEINZ

Mr. Chairman, I welcome these hearings of S. 908, legislation to establish inspectors general at the Treasury, FEMA, OPM, the NRC, and smaller Federal agencies. I am particularly pleased that Joe Wright of OMB is here today, and I welcome all of the witnesses.

Our focus today on the Treasury Department and the Justice Department is appropriate. The role of an inspector general should be to exchange investigations, not compromise them. Thus I am very concerned by the argument that inspectors general at the Treasury and Justice Departments might somehow harm the investigations those agencies must perform, either by releasing sensitive information in their reports to Congress, or by independently compromising ongoing investigations.

At the same time, S. 908 takes steps to treat Treasury differently from other agencies. The measure would exempt Secret Service, IRS, and BATF investigations, but not internal audits, from the direct control of the inspector general. The Justice Department is not addressed in S. 908.

Clearly, my own experience with the IRS center in Philadelphia lead me to believe that centralized, independent audit and review of the IRS is a needed step. My colleagues will recall that in 1985 we witnessed the complete collapse of operations at the Philadelphia center. Overburdened workers would lose tax returns rather than process them through an unworkable system. We should not tolerate the failure of management which the Philadelphia center's 1985 disaster represents.

There also remains the question of smaller agencies. Clearly savings could be achieved, and investigations enhanced, if smaller agencies met certain standards for internal audit and review. We have an outstanding set of witnesses today, and I welcome their assistance in these matters.

Chairman GLENN. I note that in keeping with the tradition established by the other 19 agencies with statutory inspectors general, none of the 4 agencies proposed for new inspectors general like the idea.

The second portion of this hearing will focus on the status of audit and internal investigation units administratively established in the Department of Justice. At the Committee's February 19th hearing, a representative of the General Accounting Office recommended a statutory inspector general for the Justice Department. We are pleased to have Assistant Attorney General Stephen Markman here to testify on the subject today.

So we are ready to start. Mr. Wright, if you would come forward to the table, please, we welcome your statement or an abridged version thereof. In either event, the entire statement will be printed in the record.

TESTIMONY OF JOSEPH R. WRIGHT, JR., DEPUTY DIRECTOR,
OFFICE OF MANAGEMENT AND BUDGET, CHAIRMAN, PRESI-
DENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

Mr. WRIGHT. Thank you, Mr. Chairman. I appreciate your holding this hearing today. I would like to submit my prepared statement for the record and just briefly summarize the highlights of it.¹

Chairman GLENN. All right.

Mr. WRIGHT. First of all, the President placed a great deal of priority importance upon the Inspectors General when he created the President's Council on Integrity and Efficiency, of which I am honored to be the Chairman. Dick Kusserow, sitting to my right behind me, is the Vice Chairman.

Very briefly, we support the intent of this bill. First, we support, including the IGs of the Departments of Energy and Health and Human Services and the Railroad Retirement Board in the IG Act of 1978, providing uniform salaries for all IGs and extending the oath authority to all IGs.

We also have no objection to establishing IGs at FEMA, OPM, and NRC. We would suggest that the Committee consider an Inspector General of the TVA. However, we feel that having a statutory Inspector General at Treasury is unnecessary. We believe that the existing Administrative Inspector General has sufficient authority to conduct and supervise internal audits and investigations of the Department's programs and operations.

S. 908 in its section 5 would also extend various requirements of the IG Act to internal audit units not now covered by the Act. Mr. Chairman, I firmly believe that there is no excuse for any Federal agency not having adequate audit coverage, so last week I directed those agencies which do not have a statutory IG to report immediately to me either stating their compliance with the provisions of OMB Circular A-73, or submitting to me in 30 days their plan for achieving compliance with OMB and GAO audit standards.

Now, there may be a number of smaller Federal entities which will be unable to meet these standards. In my prepared statement I propose that these agencies should be permitted to rely on existing Federal audit staffs in other agencies for help. I would like to add to that a little bit and that is I think it would be appropriate to see what the agencies come back with in their plans before determining whether they should establish an internal audit organization; or use outside auditors that have credibility, or use other Inspector General capabilities in other agencies.

I am not sure how the small regulatory agencies should be handled, and all I can say is I would be pleased to work with the Committee on that matter.

Section 6 of the Act would permit greater specificity in some of the items to be included in the semi-annual reports of audit activities. It would also require each agency head to submit a semi-annual report to the Congress.

The majority of the members of the PCIE have no objection to the revised IG reporting requirements that are included in this bill.

¹ See p. 64.

The Administration also generally favors agency heads reporting on their audit follow-up activities, including the implementation of corrective action. But I suggest instead of having the agency head prepare a semi-annual report to the Congress, that the bill be revised to require agencies to submit this information to OMB. We would incorporate this information in our annual management report to the Congress which accompanies the budget. We would have no problem with that management report actually being legislated in this bill.

There is another aspect of this. I believe that audit follow-up is an important responsibility of the management of every agency and believe it should be included in our budget and management reviews of the Office of Management and Budget each year.

Section 8 of the bill requires a separate appropriation account for each IG, and the majority of the IGs favor this separate line item.

Finally, the bill includes provisions concerning the Office of Investigations at the NRC and a Chief Postal Inspector at the United States Postal Service, and I defer to both of those agencies respectively on those issues.

Again, Mr. Chairman, I think that the IG Act that was passed before was an extremely good piece of legislation. We have tried to take it and administratively beef up that Act to make sure that it has been effective throughout the Federal Government. I believe it has. I believe that the Inspector General personnel that we have got in the Executive Branch are some of the finest personnel we have got in Washington, DC. They are doing a heck of a job, so therefore I think it is highly appropriate that we now go in for legislation expanding the IG Act and perfect it where necessary.

I would be happy to answer any questions.

Chairman GLENN. Thank you, Mr. Wright. Thank you very much.

In April 1981, President Reagan publicly supported the creation of an additional Inspector General, and he said, "who will have powers tailored to the specific needs of the Treasury Department." Now, it appears from your testimony that the Administration has backed off from this position. What changed the President's mind on that?

Mr. WRIGHT. Well, I think what happened is when we took a look at the Department of the Treasury and the Department of Justice, which are law enforcement agencies, we felt that it would be a much better idea to include an administrative Inspector General at Treasury that would have oversight responsibilities that would accomplish the goals of the Inspector General Act. This Inspector General would not get into the normal day-to-day operations of those law enforcement agencies. We saw a potential conflict after we got in and really took a look at the situation.

We believe at this time in Treasury that the administrative IG is doing the job without that conflict, and so that is the reason for the change in that our position.

Chairman GLENN. Well, I submit that we do not want to get into the operations of the Secret Service and bureaus like that or into security matters, that is not our purpose, but I think even the Secret Service needs to have the books looked at once in a while and make sure that some money is not squirreled away for some

purpose that we are not aware of. We have seen funds floating all over the world masterminded out of the basement of the White House and it is not unthinkable to me that there would be a bad apple once in a while even in as select a group as the Secret Service or some of the law enforcement agencies that come under the banner of the Treasury Department. So we are not trying to get into the security matters that they are responsible for, but what we are trying to do is make sure that every taxpayer dollar gets used for its intended purpose. Second, we are trying to make sure that those agencies are not stepping on somebody else's ground and that we do not have Treasury trying to do something that State is doing, that Defense is doing, that somebody else is doing, so that there is a lot of overlap and inefficiency of government. That is also one of the functions of an IG.

So it would seem to me, with that being our purpose, that it is just as applicable to Treasury as it is to any other branch of government.

Mr. WRIGHT. Mr. Chairman, I totally agree with the intent that you are espousing. I believe, though, that when we take a look at the Treasury Department, not only their law enforcement activities, and I believe they have four different law enforcement agencies, but also the substantive policy in monetary, the fiscal, the exchange rates, the tax issues, and other matters. We feel that we are accomplishing the goals that you are talking about with the administrative Inspector General and doing quite well by it. Right now we feel there is not a specific need for the legislation, that there is no reason to get into it, where it could potentially cause problems.

Chairman GLENN. I agree with you 100 percent, but Treasury is now doing what the bill would require. In fact, the Committee has received and reviewed a recent Treasury Order No. 100-02, dated January 13, 1987, and we have accepted it for the record.¹ This document is governs the department's delegation of authority to the current non-statutory Office of Inspector General within Treasury.

Now, if you look at these things closely, which we have done here, a close comparison of the provisions of S. 908 and the Treasury Order reveals that S. 908 basically is just codifying, putting into law, the IG's current investigative authority at Treasury.

Mr. WRIGHT. Yes, sir.

Chairman GLENN. The Committee understands that the proposed change in the IG's audit authority just nearly matches a consolidation proposal put forward by the department itself several years ago. So given these facts, it would seem to me that the approach in S. 908 is sound. All we are trying to do is tailor a statutory IG's authority to the special needs of the Treasury Department.

Mr. WRIGHT. I understand that, Mr. Chairman. Like many of the other parts of the bill, which I think are necessary and very appropriate expansion of the IG Act, we simply feel like this one is being handled administratively and it does not require a legislative solution.

¹ See p. 139.

Chairman GLENN. But you could make that same argument, I would submit, on any other IG in government also. What we are trying to do by codifying these things, putting them into law, is saying that any future administration or any particular head of a department of government will not have it at their disposal to do away with the IG function it. If they want to do something that is nefarious or whatever—and heaven forbid that we would have future administrations that would do that—but if they would they would have locked into place an IG. They could not do away with that at their own whim in any future administration. That is the reason we would like to see this thing locked in.

I think it is functioning right now pretty much the way we would like to see it operate. What we would like to do is codify the thing and lock it in so it cannot be changed in the future, because we think the IG concept over the past, ten years now, we think the concept has been more than adequately proven, and so what we are trying to do now is make it effective for a larger part of government.

The small agencies, that is one that bothers me a little bit. We could debate that quite a bit. You appear to favor an approach that would require OMB to closely monitor the status of agency compliance with OMB Circular A-73. What is the date on that? When was that put out?

Mr. WRIGHT. 1976, revised in 1983.

Chairman GLENN. Revised in 1983.

Mr. WRIGHT. Revised in 1983.

Chairman GLENN. How come they have not got them all in place yet? What has been the delay?

Mr. WRIGHT. I think one of the reasons is that we have been focusing on the large agencies which represent—I am guessing, Mr. Chairman—99 percent of the funds that are expended by the Federal Government, just where I believe you ought to focus our primary attention. The remainder of the agencies that we are talking about in this section, while they are large in number, represent a very small amount of the spending and the personnel in the Federal Government. That is the reason it has not been in place.

Last October, I asked that audit resolution become a major part of the vulnerability studies that are part of the Financial Manager's Integrity Act. I felt it was extremely important for us to get a process in place where the Inspector General recommendations were implemented. To be honest with you, it has been primarily myself, as the Chairman of the PCIE, focusing on the large agencies. We simply did not put the priority on the smaller ones, because that is not where the dollars are and that is not where I think the major part of the problems are.

Chairman GLENN. I agree.

Mr. WRIGHT. That is the reason why the other day I figured—I was spurred on a little bit by this hearing coming up—that it would be appropriate to go ahead and expand audit coverage throughout the rest of the agencies—

Chairman GLENN. I am glad we called the hearing.

Mr. WRIGHT. I appreciate it. You know, every once in a while somebody needs a little kick, and so we—

Chairman GLENN. So we should have called it about four years sooner, as I see it. [Laughter.]

Mr. WRIGHT. Then we did not have the large agencies working very well. By the way, we still have quite a bit of work to do. I am not satisfied with the audit resolution that is occurring. I am not satisfied with the financial integrity and the management reports that come in every year to Congress reporting on audit follow-up.

We still have to grind away at this job because it is awfully tough to change the way a lot of the agencies operate, they are so big. You know, I think it is appropriate that we now go out to the rest of these agencies and find out how they are doing. As I said in my testimony, I think that all Federal operations should be audited.

Chairman GLENN. I agree on your priorities, but I would think we could have gotten the small agencies going somewhere in the last four years. They could have been told that they are expected to live up to OMB Circular A-73 and let them get their audit position in shape there in some form or other. That would have been better than leaving them uncovered for four years.

Mr. WRIGHT. You are probably right. I only gave them 30 days to get back, rather than having them—

Chairman GLENN. Good. I hope they get back to you in that time period.

Another approach we talked about some just informally among the staff here was having sort of a floating audit group that would audit a number of these smaller agencies from time to time on a year spot-check basis or annually or whatever. You may want to give a little thought to that and we might be able to talk some about it privately after the hearing.

Mr. WRIGHT. Surely.

Chairman GLENN. The reason I thought something along those lines might be appropriate was in many of the smaller agencies or smaller entities of government we do not want to come in and in effect put a whole new group in as big as the group we are auditing or as big as the agency itself. That would not be the case, but I do not want to force 70 whole new Inspectors General in here and just waste a lot of money, when what we are trying to do is save money. So I do not want to overdo this thing.

On the other hand, we do think that everybody should be audited in some way, shape or form and it should be reported. We should look at it and make sure that we do not have a lot of the traditional waste, fat, fraud and abuse in the smaller agencies as well as the large.

I agree with your priorities on the big ones that are spending the megabucks, but we ought to be looking at the smaller ones, too. And I do not know whether a floating audit group could do some of that. You might want to give some thought to that.

Mr. WRIGHT. I will, Mr. Chairman. As I said, I amended my testimony a little bit in my verbal summary, because I am not so sure exactly what the right answer is. I would like to see the responses from the small agencies within this 30-day period of time as to what they plan on doing.

Chairman GLENN. Yes.

Mr. WRIGHT. That could be an answer, but what we would have to do is to work out within legislation the ability of the audit group, for example, to take oaths across agency lines, to get reimbursements through the appropriations accounts, and to get into some of the confidential records, for example, that they would need to have in order to audit. These are some of the problems that we have right now, with the IGs crossing agency lines and going into other operations.

Chairman GLENN. What, security?

Mr. WRIGHT. That could be an answer. Another answer, you know, is—

Chairman GLENN. You mean as far as security is concerned, what you are talking about?

Mr. WRIGHT. Security, yes.

Chairman GLENN. Access to records?

Mr. WRIGHT. Well, we—

Chairman GLENN. You mean as far as security goes?

Mr. WRIGHT. Yes, I think we might need legislation if we were to set up a separate group like that, that is all.

Chairman GLENN. Well, I do not know. We have worked that out pretty well, I think, in the IG over in the Defense Department and places like that, auditing at NSA and some of those places which are the principal ones involved in security material and top classified material. We have done the same thing out at GAO, to let them look into some of the classified material and the auditing of accounts there, and it has worked very, very well.

I do not know that we have had any leaks at all in the several years of experience we have had with those audit functions.

Mr. WRIGHT. I do not mean leaks, Mr. Chairman. What I am talking about is the ability to have access to records that they would need in order to do a full audit, on going into other small agencies, particularly if you get into the regulatory agencies. I am just posing it as a question, that is all.

Chairman GLENN. Well—

Mr. WRIGHT. What you are proposing could very well be an option for some of the small agencies and I would be happy to work with you on it.

Chairman GLENN. Okay. We would be glad to talk about that some, but I would not think that would be of a problem of sufficient magnitude that that really would stop what we are trying to do here.

Mr. WRIGHT. I agree.

Chairman GLENN. I think we could work that one out all right. If there are accounts that are not available or not accessible for whatever reasons, then I think maybe we could have a very specific and tightly controlled list that is left out of audit perhaps but, boy, that list would be small as far as I am concerned.

Mr. WRIGHT. Yes.

Chairman GLENN. And if we can go out and audit accounts at NSA and places like that, I am sure we can work out a procedure for getting into the accounts of any of the small agencies.

Mr. WRIGHT. I am sure we can, Mr. Chairman.

Chairman GLENN. I might just encourage you also to look at a number of the smaller agencies, and I mean the real small like

boards, commissions, committees. About twelve years ago, when I first got on this Committee, we started a program to see how many of these boards, committees, commissions, councils, whatever they were that were eating up taxpayer money for their once a year or twice a year meetings. We found some 1,600-some and the Committee went to work and we whacked out 400 and some, many of whom were just as happy out of existence. They were not doing anything anyway, except they all had a little budget and they all had their members travel to Washington or some place to meet once or twice a year. So we cut out 400 and some.

Now, just a cursory look indicates that we have gone back up again and I think it is now time we take a look in this decade as to how many of these things we can justify. I would like to sunset them or put a time limit on them to prove that they need to continue in existence and, without that proof, we sunset them, we terminate them.

Mr. WRIGHT. I think that is a terrific idea, Mr. Chairman.

Chairman GLENN. I do not know how many we could eliminate but we would only continue the ones that are really functioning and really performing a good function. And we have many, many tens of millions of dollars go off into that, and that you might want to start a little study over in your shop and see what you come up with on that, and we will be doing the same thing over here and I hope we can work together on that.

Senator Roth?

OPENING STATEMENT OF SENATOR ROTH

Senator ROTH. Thank you, Mr. Chairman. I am pleased that we are holding these hearings on amendments to the Inspector General Act, which I think should be, as do you, a high priority for the Committee this year.

I would also like to express my appreciation to the President's Council on Integrity and Efficiency for conducting the study that I requested on the audit and investigative capabilities of the smaller agencies of government.¹ I would particularly like to express my public appreciation to Sherman Funk and Mary Ellen Chervenik and those who worked with them in conducting this study and developing the recommendations.

[Senator Roth's prepared statement follows:]

PREPARED STATEMENT OF SENATOR ROTH

At the outset, I want to express my appreciation to the chairman for making the Inspector General Act Amendments a high priority of the Committee this year. Both houses developed ideas in the last Congress which have been carried over into S. 908 and I am pleased that we are continuing to pursue the goal of improving the audit and investigative functions of all federal agencies. Such improvements will enhance the agencies' ability to improve the economy and efficiency of government programs.

I also want to express my appreciation to the President's Council on Integrity and Efficiency for conducting the study I requested on the audit and investigative capabilities of the smaller agencies of government. I particularly want to thank Sherman Funk and Mary Ellen Chervenik and those who assisted them for their efforts in conducting the study and developing recommendations to make to the Committee.

¹ See pp. 151, 152.

Ensuring audit and investigative coverage of small agencies is a complicated issue. The 63 small agencies studied by the PCIE collectively employ about 13,000 people and spend approximately \$1.5 billion. That's not small potatoes. But, they vary in size and missions. The challenge we face is how to improve the audit and investigative coverage of those agencies in the most cost-effective manner.

The PCIE study offers several thoroughly considered recommendations based upon a number of options. Thus, I am looking forward to hearing Mr. Funk's testimony on these recommendations.

I will also be interested in studying the comments to be made by the Department of Justice on its internal audit and investigative units as Congress continues to consider the establishment of an office of inspector general at the Justice Department.

Finally, I want to welcome Joe Wright of OMB and John Adair of GAO and express my appreciation for the contributions that they will make to this Committee's consideration of amendments to the Inspector General Act.

Senator ROTH. I am always pleased to see you, Joe. Let me ask you a couple of questions and then the others I will submit if we may in writing.¹

You are obviously dissatisfied with agency compliance with A-73 and the PCIE study to be presented today recommends a two-tier approach to insure audit coverage of the smaller agencies of government. In your testimony, you recommend that S. 908 include authority for OMB to direct the existing IGs to perform audit work for the very small agencies. Do you believe that the PCIE's recommendations, if implemented, would help you in achieving the goals of A-73? And would the Administration support the inclusion of these recommendations by way of amendment to S. 908?

Mr. WRIGHT. Senator, you are right in being dissatisfied with the compliance of A-73. Before you came in, I mentioned to the Chairman that I had sent out a letter asking that all of the small agencies which are not covered by the IG Act come in with their plans for achieving compliance within 30 days.

I would like to see the results of their plans before we say specifically that we ought to either cover them through other Inspector Generals, use the two-tiered approach, use outside auditors—which is a potential—or, like the Chairman said, have a floating group of auditors that could work on a reimbursable basis from the small agencies.

I think we have some options and we are all trying to achieve the same goal, but we do not want to establish shops all over the place in all these very small agencies that really cannot afford to pay for full audit coverage.

I believe our recommendations would help on compliance, but there might be a smarter answer in there which is a combination of the proposals. So I would like to have just a little bit more time. I have not given the agencies a lot of time to respond. I gave them 30 days from last Friday.

Senator ROTH. Mr. Chairman, I have some other questions and I will submit them for the record.

Chairman GLENN. Thank you very much.

One follow-up on that: The 30-day period, have you asked them to give you a plan or to have it operating?

Mr. WRIGHT. I have asked them to give me a plan, but at that stage we are not going to waste a lot of time. This is not going to

¹ See p. 72.

be something where I am going to let any agency, let us say, go beyond this fiscal year in terms of actual implementation. This is something I think we ought to wrap up fairly quickly.

Chairman GLENN. Well, if they can plan it in 30 days, they ought to be able to implement it in 60, should they not?

Mr. WRIGHT. They should.

Chairman GLENN. So 90 days from now we have everybody being audited, we should?

Mr. WRIGHT. Yes, sir.

Chairman GLENN. Good. Maybe we will ask for a report 90 days from now. How is that? [Laughter].

Mr. WRIGHT. That is fair enough.

Chairman GLENN. How about giving us a report at the end of the 90 days? You have got 30 days for their planning and another 60 days, see how many you can get implemented. We have waited four years, I would like to keep a little pressure on this thing, to get it going now.

Mr. WRIGHT. Well, it has worked so far, Mr. Chairman.

Chairman GLENN. Okay. Thank you very much.

Mr. WRIGHT. I appreciate it.

Chairman GLENN. It is good to see both of you. Thank you. We may have some additional questions submitted by other members or by staff.

Do any of the other staff members here representing other people have any questions you want to ask?

[No response.]

Chairman GLENN. Fine. Thank you very much.

Next is Sherman Funk, Inspector General, Department of Commerce, accompanied by Mary Ellen Chervenik, who is Audit Manager, Office of Inspector General, Department of Commerce.

Mr. Funk, we welcome you and your testimony, either in its entirety or an abridged version. In either event, the entire statement will be included in the record and we welcome you to our hearing today and look forward to your testimony.

TESTIMONY OF SHERMAN M. FUNK, INSPECTOR GENERAL, DEPARTMENT OF COMMERCE, ACCOMPANIED BY MARY ELLEN CHERVENIK, AUDIT MANAGER, OFFICE OF INSPECTOR GENERAL

Mr. FUNK. Thank you for the chance to come here and discuss the report of small agency audit and investigative capabilities.

I am also going to furnish my views on sections 5 and 6 of S. 908. I know you have a lot to cover at this hearing so, with your permission, Mr. Chairman, I would like to submit my formal statement for the record.¹

Chairman GLENN. Fine. It will be included in the record.

Mr. FUNK. I will be as brief as I can, with a review of the more significant points.

I am wearing two hats here today, first as Chairman of the PCIE's Inspections and Special Reviews Committee, which was

¹ See p. 76.

charged with conducting this report, and the second as Inspector General of the Department of Commerce.

I have been nominated as the Inspector General of the State Department; however, I have not yet been confirmed in that post.

Our review, which was requested last year by Senator Roth, was conducted by a team from the Commerce, Interior, HHS, and Defense OIGs. I might add at this point that a major benefit, a major spinoff of the PCIE is that it allows us to do jointly as IGs what we cannot do individually, by sponsoring and allowing us to look at inter-agency activity.

Mary Ellen Chervenik, of the Commerce OIG, was the audit manager of our study and she is here with me today.

We reviewed 63 agencies which either have no audit or investigative staffs at all or have a staff of fewer than 10 professionals. We say that these agencies are small. In the Federal Government, however, small is a relative term. Collectively, the 63 agencies employ about 13,000 people and spend about \$1.5 billion annually, and even in today's budget that is not walking around money.

Senator ROTH. What was that dollar figure?

Mr. FUNK. \$1.5 billion a year.

Chairman GLENN. When you say small, can you hook a dollar figure on that? What is the agency's budget—any agency that has \$2 million, \$5 million, \$100 million budget?

Mr. FUNK. It goes up to, I think the top is about almost \$500 million total for the largest agency and it goes down to \$200,000 for the smallest.

Chairman GLENN. Okay.

Mr. FUNK. Some of them, as you suggested, Senator, are really only about five people who meet twice a year in Minnesota or Washington or something and they are very small budgets. And we were very careful about trying to avoid overkill.

We found that of the 63 agencies, only 22 have audit units. Eleven of these audit units are not organizationally independent, as required by GAO standards. Their directors were generally perceived by agency staff to have little or no authority to select for audit those areas with high vulnerability to fraud, waste or abuse.

We found that audit coverage in these 22 agencies that have audit units is limited and sporadic. Very few of the audits performed tried to find out whether the results desired by Congress when it set up these agencies were in fact being achieved or whether the agencies could conduct their operations at a lower cost to the taxpayers. Only 4 of the 63 agencies have investigative staffs, and what little internal investigative work we found in the other agencies were usually handled by auditors, by management in conjunction with the general counsels, and in a few cases through referral to Justice, in which case normally the FBI took over.

None of the audit or investigative units have a statutory base. This gets back to the point that the Chairman made a few moments ago. Thus, the agency heads now eliminate their audit or investigative staff for any reason at any time with no justification.

Of the 41 agencies we found without an internal audit unit, most did not obtain adequate coverage from external sources, such as the GAO, CPA firms or other Federal agencies. As a result, there

has been little independent assessment of how agency funds were spent or of the effectiveness of agency operations.

In summary, to make it very brief, we found that audit and investigative activities at these 63 agencies should be improved. Obviously, any changes must be carefully weighed against the costs of improving this coverage. It would be absurd to spend nearly as much on a watchdog function as the resources to be watched.

We therefore considered a wide range of options before deciding on the recommendations I am presenting today. And, Mr. Chairman, one of the options was essentially that floating audit unit that you talked about. We considered a range of these and I will go into detail later, if you so desire. But one of them was the establishment in effect of a new OIG whose sole function would be auditing these small independent agencies.

We think that our recommendations that I am about to present should apply to the 10 small agencies not included in our study, either because of their large size or because they had already been looked at by GAO.

First, we recommend that strengthened consolidated audit and investigative function be established in the 31 agencies listed on the attachment to the statement I have submitted for the record. These agencies have a budget authority of more than \$100 million each or are regulatory in nature. Some of the regulatory agencies have budgets of substantially less than \$100 million. However, in view of the public sensitivity of their work and in our view the paramount need to assure the continuing integrity of their staffs' operations, we think that all of the regulatory agencies, regardless of size, should be included in this recommendation.

Essentially, the strengthening we suggest should be accomplished through the means laid out in section 5 of S. 908, that is, the heads of the units would generally be afforded the authorities contained in sections 4, 5, 6, and 7 of the IG Act.

We do have one caveat. Full compliance with all of these sections may impose an excessive administrative burden on some of these smaller agencies. For example, it would be extremely difficult for a small unit to conduct the legislative and regulatory reviews required by section 4 or to prepare the semi-annual reports to Congress required by section 5, or perhaps even to adequately support the subpoena authority furnished in section 6.

Common sense would suggest several ways of solving these problems without diluting the basic nub of independence. I will be happy to discuss these later, if you wish.

Chairman GLENN. Thank you very much, Mr. Funk.

To your knowledge, has any statutory IG ever made an arrangement with one of these small agencies to audit its programs and its operations.

Mr. FUNK. Informally, yes, sir, there have been several. The Defense IG has audited the American Battle Monuments Commission. The HHS IG has audited the Selective Service Commission. The Interior IG has audited the Holocaust Memorial Council. And I believe the GSA IG has audited the Civil Rights Commission and the Arms Control and Disarmament Agency. These have all been informal arrangements.

Chairman GLENN. Do the smaller agencies have budgetary authority right now to use some of their, whatever their contingency monies are to enter into such arrangement as this? Are any of them precluded from making an arrangement with the larger group for an audit function?

Mr. FUNK. To the best of my knowledge, virtually every independent Executive agency does have some contract, inherent contract authority, and what we are really talking about is very simply under any name cross-servicing agreement for which they would reimburse. They have that authority, yes, sir. They may not have the money but they have the authority.

Chairman GLENN. They contract for this, they pay for it just as though they were contracting without an outside—

Mr. FUNK. Precisely so.

Chairman GLENN [continuing]. With Arthur Andersen & Co. or somebody?

Mr. FUNK. It is a bit simpler, because you do not need a contract arrangement, you have a memorandum of understanding and you simply pay by interagency transfer.

Chairman GLENN. Can they just as well go to one of the major outside accounting firms and ask for an audit of their books, can they pay for that without additional authority being granted?

Mr. FUNK. Some of them do that right now, Mr. Chairman. But one of the difficulties is that a CPA firm, even one of the very big eight CPA firms, generally are not effective at doing internal program audits. If we are talking about preparing a balance sheet, preparing an end-of-year financial statement, no problem. But if we are talking about how effectively the agency is spending its money, is it achieving its mission, generally speaking CPA firms are not, this is not their—

Chairman GLENN. No, and that is what I was leading up to here. I am glad you answered that, because those are two things that were in your statement here as to what they do. It is the disposition of agency funds and the effectiveness of agency operation, to quote out of your testimony here.

Mr. FUNK. Yes, sir. Basically, until now they have been doing the first but not the second. If they have been doing it at all, it is only the first.

Chairman GLENN. If a small agency contracts with someone else to audit their books and to assess their performance, isn't there a need for an expertise to measure the efficiency of their operation or the effectiveness of agency operations to make sure they are doing the job they are supposed to do, not just regarding the money, but also implementing the program?

Mr. FUNK. Yes, the GAO breaks down the types of audits into three categories. One category is called program results audits, are we in fact getting what we are paying for, and that tends to be something which is not normally within the expertise of CPA firms.

Chairman GLENN. I noted in your testimony—you did not read this, but I noted in your full statement you said one possibility might be to match an IG for cognizant assignment based upon reasonably related missions; this might not be as difficult as it may appear—and you gave some examples for the Commerce Depart-

ment, and those are what I am interested in, because NOAA's National Marine Fisheries Service has a function that closely relates to the Marine Mammal Commission, and the Economic Development Administration, an agency which relates to the National Council on Public Works, and the National Bureau of Standards is an agency with a function which relates to the National Institute of Building Sciences, and so on, a number of examples like that here.

I do not know how much overlap there may be with some of those. If they are completely capable of auditing each other, including their effectiveness of agency operations, maybe we have some overlap here we should be looking at to eliminate it, as I mentioned a little while ago.

Mr. FUNK. Mr. Chairman, I was interested by your comment, because when I started to do some tentative matching just by looking through the Government Manual, I am not an expert in anything but the Commerce Department—hopefully soon the State Department—anyway, as I was going through the Government Manual looking at these myriad of independent agencies and trying to come up with a reasonable match on a related mission basis, I was rather surprised at the extent to which they seem to be doing similar things.

Chairman GLENN. I would be hard pressed, it seems to me, to think that National Marine Fisheries Service does not relate pretty closely to Marine Mammal Commission, whatever that is.

Mr. FUNK. That is the point I was getting at, yes, sir.

Chairman GLENN. Can you tell us how the head of a small agency and a statutory IG would reach agreement on the price of the IG services and the kinds of services the IG would provide?

Mr. FUNK. Essentially this is being done right now when we do cross-servicing. Circular A-73, which Mr. Wright was talking about, Circular A-73 calls for, recommends strongly, cross-servicing as a way of reducing duplicative audit coverage.

For example, in my department, in Commerce, I arrange in effect a contract with Mr. Kusserow, of HHS, the IG at HHS. That OIG audits about 96 percent of all of the university grants. They also do university grants for my agency. I reimburse them on a simple interagency transfer. We negotiate a basis for working together. In effect, he charges me \$33 an hour for his audit work, which is a package figure covering salary expenses plus travel, and I reimburse him when I get a bill.

Chairman GLENN. Basically on a cost basis, is that it?

Mr. FUNK. Incurred cost, an actual cost basis.

Chairman GLENN. You estimate the travel required, the per diem required?

Mr. FUNK. No, not estimate; actual, the actual that is incurred. We pay back on actual hours of work performed and on actual travel, and there are no problems. It has worked out very smoothly.

Chairman GLENN. There is no problem monitoring the monitors, I guess, here, is there?

Mr. FUNK. Well, we are pretty careful about it.

Chairman GLENN. I trust you are not trying to make a profit off him over here.

Mr. FUNK. We keep a close eye on him.

Chairman GLENN. Some of your recommendations would require OMB to seek additional funds as necessary for agencies to reimburse their cognizant IGs for audit or investigative work. What happens if OMB does not do so or Congress refuses to appropriate the necessary funds, would these agencies just not get audited?

Mr. FUNK. Well, this is a difficult thing to answer. In effect, the Economy Act precludes our doing work for nothing for somebody outside of our department. In theory, if I do work for another agency and that agency does not pay me, I am in violation of the law, the Economy Act. Whether or not I will go to jail is something that I think is not relevant, because in the Anti-Deficiency Act and the Economy In Government Act, I suspect there are far more violations than are ever prosecuted.

In the real world, what I would do in a case like that, Mr. Chairman, is be darn sure that I negotiate with the financial officer of that agency or with the head of the agency if it is a very, very small agency, and make very, very sure that I am going to be covered before I do the audit work. And I think if we are reasonably careful along that line, the situation will not arise.

Chairman GLENN. That would be a very serious flaw in this system, would it not? Because it seems to me that the agency, through its financial officer, could be dictating which audits and investigations do in fact occur.

Mr. FUNK. Well, the memorandum of understanding that will be negotiated between the cognizant IG and the agency head would have to be done with some care to make sure that the IG has the full latitude of authority under the IG Act. In other words, if they say I can only give you \$10,000, that is all I am going to pay you for, we do not do business that way. We do business by the job and that has to be carefully laid out in advance.

Chairman GLENN. Would there be a termination date in the MOU, the memorandum of understanding? What happens if one party feels the other party is not living up to the agreement, would that be a problem?

Mr. FUNK. Virtually every memorandum of understanding, certainly any one I have ever signed, has a built-in provision to be terminated or cancelled unilaterally if one party objects, but almost always there is a time, a lead time put in there. It could be 30 days, 90 days, 6 months, depending upon the complexity of the arrangement.

In the case where a problem arises or if there is a disagreement about what is to be audited or how, I would suspect that the natural avenue of recourse would be to go to Joseph Wright and lean on Joe Wright to come up with a Solomon-like decision.

Chairman GLENN. I do not envy him in his position in that situation.

Mr. FUNK. I do not believe that would come up too often, sir.

Chairman GLENN. I would not think it would either.

Senator Roth?

Senator ROTH. First, I want to repeat my appreciation for the study undertaken by both of you.

Mr. FUNK. Thank you, Senator.

Ms. CHERVENIC. Thank you.

Senator ROTH. It has been most helpful.

On page 3 of your testimony, you suggest that full compliance with all sections of the IG Act by the 31 agencies may well impose on many of them an excessive administrative burden. For example, it may be difficult for a small unit to conduct the legislative and regulatory reviews required by section 4 or to prepare the semianual reports to the Congress required by section 5.

I gather you do not think it would be cost effective, so you would just delete those requirements, or how would you handle that?

Mr. FUNK. I think I would prefer to rely upon the judgment of the internal unit or the audit head of that unit. I do not think it will be fair to burden a small unit with a requirement to spend or burn up the resources of two full-time people preparing a semianual report or to do legislative review. There is not really that much of a body of legislation coming down the pike. It should be decided locally, and if it is in the view of that person, if it is important enough to warrant, let him make the decision. I would not want to sit here and try to lay out to 31 agencies what their procedures should be. I am just pointing up that there may very well be a difficulty.

Senator ROTH. You also say that it may be difficult for the smaller units to adequately support the subpoena and, perhaps, the appointive authority.

Mr. FUNK. Yes, sir.

Senator ROTH. Do you feel, for example, that these agencies can operate effectively without subpoena power.

Mr. FUNK. As I put in my testimony, I think subpoena power is essential for any kind of extensive work on fraud. In Commerce, literally none of the big fraud cases that we have made would have been possible without sometimes extensive use of subpoena authority.

The difficulty is that we do not ever want to abuse the authorities given to us in the law, so that we are extremely careful to make sure that, before a subpoena is issued, it is fully justified, we can assert and defend that we were not likely to get the information without a subpoena that is served properly. These actions take time and they take resources.

I might add that my Office of Counsel, as part of a PCIE project, did a study of IG subpoenas from 1978 to 1986 and we found that of the thousands and thousands of subpoenas issued, only 122 were ever challenged, and only 3 of these 122 were supported by the courts. That is an astonishingly good record and that bears out the great care that goes before issuing a subpoena.

Now, frankly, a small unit would have difficulty in doing that, and one of the suggestions that I make in my testimony, in my statement, is that the Department of Justice and the Civil Division has a Federal Programs unit which specializes in the preparation and defense of subpoenas, they might be of use to a small unit.

But to take away the subpoena power would be I think, I would be opposed to that. It is a critical tool, particularly doing work externally from the department.

Senator ROTH. One final question, Mr. Chairman.

Reference has already been made to this issue by the Chairman, and that is a question about CPA firms. Are there any situations where smaller agencies might be better served by a private firm?

Mr. FUNK. Senator Roth, I envision that if the cognizant assignment process is ever put into effect and whether it is done specifically in law as an amendment or whether it is done, as Mr. Wright has suggested, simply by authorizing OMB to make that assignment when it feels it is necessary, which to me is perfectly adequate, whenever it is done the IG will have the power to decide should I do this in-house or should I do this by contract with a CPA firm. I believe all of us in the IG community use CPA firms.

What I would do if I were using myself as an example, if I were going to audit one of the small commissions, the River Basin Commission, say, I would have a CPA firm do their end-of-year financial statement. I would not use my own resources for that. But if I were going to review the efficiency and effectiveness and program results of that small agency, I darn well would have my own in-house auditors do it. It is not something I would like a CPA firm to do.

Senator ROTH. Thank you, Mr. Funk.

Mr. Chairman, I have some other questions and I will submit them in writing.¹

Chairman GLENN. Thank you.

One additional thing. You are in the Department of Commerce.

Mr. FUNK. Yes, sir.

Chairman GLENN. Do you have a list at Commerce of all the boards, committees, commissions, councils, forums, advisory groups that function under the Department of Commerce?

Mr. FUNK. Yes, sir. The Secretary had a complete list that was done and we have that. That was about a year ago, so that is available for the Commerce Department. It was an extraordinarily extensive list.

Chairman GLENN. Do you know how many there were? Did you recall how many, just roughly?

Mr. FUNK. I am sorry, I do not. It is a very long list.

Chairman GLENN. Do you, Ms. Chervenik, do you know?

Ms. CHERVENIC. No, I do not, not within Commerce.

Chairman GLENN. Well, obviously we are playing around with ideas on this, but I welcome any comment you might make now or later, and we can talk about this later, as to what the effect would be if we just terminated all of those at the end of a fiscal year or at the end of a calendar year, either one, except for those specifically reauthorized. In other words, we would sunset everything except for those specifically reauthorized.

Mr. FUNK. Well, I know when——

Chairman GLENN. That would certainly cut out a heap of dead wood, it seems to me.

Mr. FUNK. I know in the Commerce Department, particularly in the international areas of trade, the International Trade Administration, we have a slug of advisory committees and advisory councils covering specific areas of trade and industry. Now, these meet

¹ See p. 87.

and they have representatives from American industry and government and they play a fairly important role.

Now, are all important? I obviously cannot answer that.

Chairman GLENN. No, I would not want to cut out those who are doing a good job, and I know that these councils and advisory groups bring a lot of expertise in from the outside from persons who are not full-time government employees and we reap a great deal of benefit from their counsel and advice. But there are also an awful lot of hangers-on out there that are committees and commissions and boards and councils and forums and all these things I think in every department of government they were formed for a very good purpose at one time and they have now served their purpose but they continue on year after year after year because nobody is willing to tell their people, look, we do not need your service any longer, so we go ahead and spend money on them all the time and we could terminate them.

We might want to follow up on this with a letter. I am not formally asking you to do a big study on this right now, but we might want to take a department like your department or Agriculture or somebody and sort of make a test survey of it, just to see what we have out there. I am not sure we even know how many.

As I said before, some ten years ago we had 1,600-some, and we eliminated 400 on this Committee, and I would guess that 400 has probably come back in spades and another 400 added to it by this time, after ten years.

Mr. FUNK. If I may make a cynical comment, I suspect that if we move to sunset all of the 2,000, or whatever the number is, of commissions, there would be a lot of business around the beltway in consulting firms drafting justifications for them for the next session of Congress.

Chairman GLENN. That could be.

Thank you very much.

Ms. Chervenik, you have not made any comment here. Do you have any comments you want to make on any questions that were asked here?

Ms. CHERVENIK. Mr. Chairman, I fully support Mr. Funk's statements on the coverage of the small agencies. With respect to the CPA firms, I might add that one point is that the CPA firms would be under an agreement with an independent audit head and the difference between having an IG cognizant versus a CPA service provider would be that the issue of who is calling the shots as to what is supposed to be audited or investigated, Mr. Chairman, I suspect that the CPA firms would not be given that degree of authority in auditing Federal agencies, and that those decisions would be made by the head of the small agency who in fact may not be independent in making those decisions.

Chairman GLENN. Good.

Senator Roth.

Senator ROTH. No questions.

Chairman GLENN. Does any staff representing other people have any questions.

[No response.]

Chairman GLENN. OK. Thank you very much.

Next, John J. Adair, Associate Director of Fraud Prevention and Audit Oversight Group of the Accounting and Financial Management Division of the General Accounting Office, accompanied by David Clark, Deputy Associate Director, Fraud Prevention and Audit Oversight Group, Accounting and Financial Management Division, General Accounting Office.

Gentlemen, welcome. Mr. Adair, we look forward to your statement, either in its entirety or an abridged version. In either event, it will be included in the record in its entirety.

TESTIMONY OF JOHN J. ADAIR, ASSOCIATE DIRECTOR, FRAUD PREVENTION AND AUDIT OVERSIGHT GROUP, ACCOUNTING AND FINANCIAL MANAGEMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY DAVID L. CLARK, DEPUTY ASSOCIATE DIRECTOR

Mr. ADAIR. Thank you, Mr. Chairman, and I will summarize my statement.¹ We appreciate the opportunity to be here today to discuss S. 908, and we will be giving you our views on the establishment of the four IGs in the bill, talking a little bit about our work regarding the Office of Personnel Management, giving you our views on some other provisions in S. 908, and commenting on the PCIE report that has been discussed this afternoon.

With me today is David Clark, who is my Deputy, and he also headed the brief review we conducted at OPM.

S. 908 would, among other things, amend the Inspector General Act of 1978 by establishing offices of inspector general at the Department of the Treasury, FEMA, NRC and OPM. Mr. Chairman, we support the creation of the IGs in all four agencies.

In 1986, we issued a report to this Committee recommending that Congress amend the Inspector General Act of 1978 to establish a statutory IG at the Treasury Department. Under S. 908 the new IG office that has been proposed would include the operations of the current non-statutory IG, plus those portions of Treasury law enforcement bureaus engaged in internal audit activities. Those portions devoted to investigative activities would not be merged into the new office. We think this type of organization would work well, provided that S. 908 keeps its current provisions giving the new IG office general oversight responsibility over those internal investigative activities as well as the authority to conduct investigations in law enforcement bureaus under certain circumstances.

I would say, Mr. Chairman, that the legislation as it has been introduced is certainly responsive to the concerns that have been raised by the Treasury Department and I thought that perhaps the Administration would be more supportive.

With regard to FEMA, we support the establishment of an IG there. We have reported that FEMA has experienced problems in the areas of auditor independence as well as regarding coverage of important FEMA programs and activities. We think the establishment of a statutory IG at FEMA would help resolve those problems.

¹ See p. 90.

In addition, we support the establishment of an IG at the Nuclear Regulatory Commission. There is a strong need to enhance public trust in the regulation of nuclear power. Incidents such as the Chernobyl accident and the revelations brought out in your hearing of April 9, Mr. Chairman, reinforce the need for independent oversight and reporting to the Congress on the regulation of nuclear power and oversight of other NRC activities.

S. 908 also would establish a statutory IG at the Office of Personnel Management. We believe that this would strengthen the non-statutory IG office's independence and also improve congressional oversight. Further, because of the size of the retirement and disability trust fund, which had outlays of \$24 billion in fiscal 1986, and because of proliferation in the number of insurance carriers, approximately 400 in fiscal year 1986, we believe a statutory IG is needed to insure the highest level of audit and investigative coverage in OPM.

Mr. Chairman, you requested in March of this year that GAO provide assistance to this Committee in reviewing OPM's internal audit and investigative functions. There are, in addition to the current non-statutory IG, several organizations in OPM which perform internal audits or audit-related functions. They include the Insurance Audits Division, the Program Integrity Section, and the Analysis and Evaluation Division. I would like to briefly comment on each of these three groups and provide our opinion as to whether they should be included in a statutory IG office at OPM.

First, I would like to discuss the Insurance Audits Division, which is responsible for audits of contractors providing health and life insurance to Federal employees.

S. 908 would merge the Insurance Audits Division into the IG office, and we support merging the Insurance Audits Division into the IG office. We have two reasons for our position.

First, we believe that its function falls within the scope of internal audit activity. The division, in fact, from 1982 until 1986, was a part of the IG office. OPM's rationale for placing it outside the IG office appears to be based on OPM management having better control over these audit resources.

Second, placement of the Insurance Audits Division within the IG office would strengthen the independence of the OPM internal audit function. The IG reports to the Director of OPM, whereas the head of the Insurance Audits Division reports to an OPM associate director who heads the retirement and insurance group.

We believe independence is one of the most important determinants of the overall effectiveness of the audit function. The Inspector General Act of 1978 and its legislative history makes it clear that an audit function should report to the highest level within the agency to insure independence.

Under S. 908, another office in OPM, the Program Integrity Section, would also be merged into the IG office. Some of the work of the Program Integrity Section might be considered internal audit activity, insofar as identifying ineligible recipients of retirement payments might be considered to be within the internal audit realm of detecting fraud, waste, and abuse.

However, their work may more appropriately be considered a typical control function in that it falls within the realm of manage-

ment's internal control responsibilities. Further, the section carries out a programmatic function in that it is responsible for terminating benefits, calculating overpayments and establishing repayment schedules.

Because of its programmatic functions, we believe it may be more appropriate to leave the Program Integrity Section outside of the IG office, provided that the IG has the authority and sufficient resources to evaluate significant fraud problems in the retirement area and to determine underlying causes and systemic weaknesses in that area.

A third office within OPM, the Analysis and Evaluation Division, has experience in performing internal audits. This organization was in fact part of the IG office until 1982. In 1986, we reported to this Committee that the transfer of the Analysis and Evaluation Division had resulted in the IG being unable to provide what we felt was adequate coverage of OPM programs.

OPM officials have advised us that they are now considering moving this group back into the IG office. We support that move and suggest that S. 908 be revised to incorporate this organization into a statutory IG office at OPM.

I would next like to provide GAO's views on some of the other provisions in S. 908. We support the provisions in section 5, strengthening the audit coverage in agencies not covered by the Inspector General Act of 1978. For example, we strongly support the provisions strengthening the centralization and independence of the internal audit and investigative units in those agencies.

Section 5 would also provide that heads of Federal entities without internal audit units periodically report to GAO and OMB on action being taken to ensure adequate audit coverage. We believe that the appropriate body for receiving such information is OMB, rather than GAO. OMB policy guidance provides that all Federal agencies have adequate audit coverage of their programs. The reporting provisions in section 5 would help OMB ensure that agencies are following its policy guidance on audits in Circular A-73.

In addition, section 5 contains a provision designed to strengthen the independence of the Chief Postal Inspector of the U.S. Postal Service. We agree with the intent of that provision.

Section 6 includes provisions to promote the uniformity and the reliability of IG reports. We fully agree that the information reported to the Congress by the IGs should be uniform and consistent. To that end, we support the definitions contained in section 6, particularly those pertaining to what constitutes audit determination and audit resolution.

Also under section 6, Federal agency heads would be required to report semi-annually on those audit reports where recommendations were not resolved within 1 year after the date on which audit determinations were made. We believe this requirement will be very useful in drawing needed attention to cases that may be taking too long to resolve.

I would digress for just a moment from my testimony, Mr. Chairman, to point out that this in fact may be the solution to a problem we have recently come upon in the Department of Defense. There was a House Armed Services Committee report issued in just the past month or so that included some information from a briefing

that GAO had provided on its review of audit resolution in the Department of Defense.

One of the things we had found was that there are recommendations totaling somewhere in the neighborhood of \$300 million that were not implemented for years, even though agreement had been reached between the auditors and the program people as to action to be taken. In other words, the auditors would do a review, make their recommendations, Defense management would agree to take corrective action within, say, 6 months or a year, and then several years beyond that we would find that no action had been taken.

Now, when we briefed the House Armed Services Committee, they took some of our information and included it in their report and said—and I would like to quote a couple of sentences from their report—they said they viewed this as stalling by management. They said this pattern of stalling on audit resolutions or, even worse, agreeing to recommendations but never taking action is not acceptable. Management must take quick, decisive corrective action based on audit recommendations. If managers drag out the audit resolution process or sidestep the process by agreeing to actions and never implementing them, the effectiveness of the process is diminished.

The bottom line on this, Mr. Chairman, is that the Committee recommended a total of \$100 million in reductions in the O&M budget for Army, Navy, Air Force, and the Department of Defense, to reflect a conservative estimate of unachieved savings. So far that reduction has carried through into the Aspin amendment and will be debated, I suppose, as part of the House-Senate conference on the Defense bill. But again, my point is that this provision in S. 908 would help to solve this type of problem.

We do have one concern, however, regarding section 6. It would, we believe, indirectly, our lawyers tell us, result in GAO having to revise its Standards for Internal Controls in the Federal Government to ensure that audit determinations be made within 6 months. We believe that such a requirement for audit determinations within 6 months should be provided directly by this legislation, rather than by having the GAO standards changed.

Finally, section 8 would provide that separate appropriation accounts be established for each statutory IG mandated by the IG Act of 1978. We support the intent of section 8 and we supported this position in the 1984 GAO report which examined the budgeting procedures for statutory IGs.

My last topic is the report of the PCIE. As Mr. Funk testified, the PCIE has identified more than 70 small agencies having either no audit or investigative units or having less than 10 professionals in those units. Of those agencies with internal audit or investigative units, many are not independent and most do not provide adequate audit coverage of their agencies' programs. The PCIE identifies a range of options to strengthen the audit coverage at these small agencies and recommends this Committee adopt two of the options.

First, as Mr. Funk said, the PCIE recommends establishing and strengthening internal audit and investigative functions in those agencies which are regulatory in nature and/or have relatively large levels of personnel or budgets. Second, for each of the smaller

agencies, the PCIE recommends designating a cognizant IG from among the existing statutory IGs. The cognizant IG would provide reimbursable audit and investigative support on the basis of a formal memorandum of understanding.

We believe all Federal agencies should have internal audit coverage, and that within each agency audit and investigative functions should be centralized, and that they should be independent.

We agree, at least in principle, with the PCIE's first recommendation to establish and strengthen internal audit and investigative functions.

We believe that the PCIE's second recommendation, regarding designating cognizant IGs also has merit. The recommendation is designed to ensure audit coverage and may actually go a little further than S. 908 in getting audit coverage for the smaller Federal agencies.

However, before endorsing the PCIE recommendations, we think it is important to fully understand exactly how the PCIE would ensure that its recommendations would be successfully implemented. For example, it is possible that cognizant IGs may not have sufficient incentive or resources to provide adequate coverage of the smaller agencies, and I believe, Mr. Chairman, you have in your hearings this afternoon pointed out some other concerns that would have to be resolved before this concept would be deemed workable.

This concludes my statement, Mr. Chairman, and we would be pleased to respond to any questions you have.

Thank you.

Chairman GLENN. Thank you, Mr. Adair, very much.

You have identified the organizations in OPM which should be included in the statutory Office of Inspector General. Do you have other concerns which would support the establishment of a statutory IG?

Mr. ADAIR. Yes, Mr. Chairman, we are concerned, quite frankly, over the number of times that OPM has reorganized its internal audit functions during the last few years. Now, in addition to being disruptive, these types of reorganizations can result in loss of centralized, coordinated auditing of OPM programs and operations.

We think establishing a statutory IG would help ensure a more centralized, stable audit and investigative organization and give the Congress better opportunity to oversee the work at OPM.

Chairman GLENN. Why are they continually tinkering with the organization?

Mr. ADAIR. I think perhaps one reason—well, the official reason is that they wanted to have better control over the direction of the audit resources, that is why they removed one of the groups in 1986, but also I think there is a question of the reimbursement of auditors. I believe that the auditors in their current position can be reimbursed by the insurance carriers, whereas they perhaps would not be in an IG office. We think the benefits of moving them into the IG office would outweigh any cost considerations.

Chairman GLENN. Over the years, GAO has repeatedly documented the failure of numerous small agencies to comply with OMB directives on audit independence, coverage, and follow-up.

Mr. Wright and Mr. Funk both addressed that. What are your reactions to their proposals for small agencies?

Mr. ADAIR. Well, it is true that we have documented some failures regarding the small agencies, and I think Mr. Wright pointed out that they have in fact been focusing on the larger agencies. Sometimes, of course, too, OMB circulars are ignored by the agencies and OMB just does not have the personnel to always follow up and see that things are done.

This might be the exception, because we have Mr. Wright and the PCIE very much concerned and interested in what happens in the audit community. They seem to have come up with a proposal that is responsive to the concerns of this Committee and the GAO that the smaller Federal agencies have audit and investigative coverage. As to whether the cognizant IG proposal is the best one, or perhaps the floating group that you mentioned earlier, I think we in GAO have not quite had enough time to analyze this, having just received the report, but it is responsive to the problem.

As you know, in 1986 we issued a report that identified many of the same problems and I think there was a concern that if GAO had made a recommendation that the IGs take on the work in these smaller agencies, that we might have been rebuffed by the IG community, saying that they did not have enough resources to completely take care of their own work. Apparently, having gone through this study, they see some possibilities, either with the dozen or so auditors that are already located within the 40 smaller agencies being reassigned elsewhere, either to a single Inspector General who would supervise the floating audit group, or to several of the larger Inspector General organizations, or however the OMB would see fit to do that.

I think that there is a solution here, it just needs to be worked on a little longer, and have a little more thought put into it.

Chairman GLENN. When we had our first kickoff hearing and Comptroller General Bowsher was here, he testified that we have identified 400-some different accounting systems across the government. I did not know that the auditors could invent that many systems, but apparently they have.

I am turning my hat around now and arguing against the floating group. Can any group that would be floating keep up with these different accounting processes? Which is something I think we have to address across government, somehow over a period of years we have to shape up and get on basically the same system. I do not quite know how we do that, but I know I think we should. But would a floating group have difficulty with just keeping up with the different systems?

Mr. ADAIR. I imagine they would, and I would say that what we are doing this afternoon, in the testimony you have heard so far, is trying to brainstorm the solution to this problem. I do not think any one of us at this point knows exactly what the right solution is. You can argue from both sides of the issues.

I think the PCIE has offered to work with this Committee, and GAO certainly makes the same offer. We would like to see this resolved appropriately the satisfaction of to everyone concerned. We would be happy to work with you on this because we do believe that the smaller agencies deserve audit coverage, and we may find

when they do get audit coverage that some interesting and serious problems may be uncovered.

Chairman GLENN. In the GAO you have looked at these different groups of government. How can we do away with a lot of these commissions, boards, forums and advisory groups and things? You were in the room when I was talking about that a little while ago.

Mr. ADAIR. Yes, sir.

Chairman GLENN. Is it feasible to set a date to terminate all of those unless specifically reauthorized? Is that an approach that would work, or is that too draconian.

Mr. ADAIR. I guess I have heard that proposal made in years past and I always personally thought it was a good idea to do that and see who protests it. There would be a number, I imagine, that you would never hear anything from. They would just disappear without a word. It might be an interesting approach to take at some point.

Chairman GLENN. I do not know whether we could do this across the length and breadth of government, or whether we ought to try it within a particular—maybe we ought to try it on our own Committee staff here. [Laughter.]

Senator Roth?

Senator ROTH. On that point, Mr. Chairman, I might point out that I think it was Senator Metcalf of Montana many years ago who sought, and I think with a real amount of success, that kind of approach. The problem is that nothing ever dies here, it is always reborn, but I think I would be happy to join the Chairman in trying to tackle this problem.

Chairman GLENN. I have asked the staff just to tentatively look at how we go about this, Bill, and I do not know, maybe we can work together on this thing. You have done a lot of work in this area in the past.

When I first got on this Committee back twelve years ago, one of the first things we got into was in this area, and I think we eliminated 400-some. I do not know what the dollar value saved was at that time, but I think I would like to have somebody one of these days do a study on just how many boards and commissions and all these things there are across government so we know the magnitude of the problem, number one, if we can ever get an accurate accounting of them, and then decide which approach to take to terminate a lot of them.

Senator ROTH. I also would like to make a little comment on the second point about standard accounting systems. I think it was back in the fifties that the General Accounting Office came out with certain standards for accounting, and we are still talking about that—I do not know how many years it is, 35 or 36 years later.

We proposed in our legislation last year [S. 2230, 99th Congress] that an individual, someone in—I think we finally ended up in OMB, whereby they would be given authority to implement these recommendations of GAO, and if they were not adopted within I think a five-year period—I may be wrong, because we went through so many different processes—then GAO would have the authority to implement it in the agency.

I think it is going to take that kind of extreme support because I have heard the Comptroller General as long as I have been on this Committee talk about the need for standard accounting principles, and until you get that it is very difficult to accomplish what we are trying to do today.

So I would urge in this area, Mr. Chairman, that we really try to make that a top priority, because I think of all the financial reforms, that would be one of the most meaningful.

Would you agree with that, Mr. Adair?

Mr. ADAIR. Sorry?

Senator ROTH. Would you agree with that?

Mr. ADAIR. Yes, sir, I would, Senator.

Senator ROTH. Let me go back to a couple of questions I asked earlier. Mr. Funk testified that application of all the authorities and responsibilities of sections 4 through 7 of the IG Act on the small agency would impose excessive administrative burdens. I would just like to have your comment on that.

Mr. ADAIR. I would agree with that with regard to the semi-annual reports. I think an annual report would be sufficient in that area.

Senator ROTH. What about subpoena power, how do you feel about that?

Mr. ADAIR. Well, until I heard Mr. Funk's testimony, my opinion would have been let us give it to them, whether or not they use it or not, it would be at least available. I guess I am still pretty much of that opinion, although I think I would have to think about that a little more after hearing Mr. Funk talk about it being perhaps costly to administer. I do not quite see how that would be, but it seems to me that they should have that authority, whether or not they actually have to use it. I would not see them using it very often, but it should be in reserve.

Senator ROTH. Mr. Adair, in your closing paragraph you make the statement that, "For example, it is possible that cognizant IGs may not have sufficient incentive or resources to provide adequate coverage of the smaller agencies." What do you mean by "not sufficient incentive"?

Mr. ADAIR. Well, in thinking about how this proposal for cognizant IGs would work, one starts to look at the mechanics of it and, without benefit at the time the testimony was prepared, of actually seeing a final report, we were trying to speculate as to how this would be implemented. It seemed to me at the time that perhaps the IGs were being called upon to use their existing resources to audit the smaller agencies which I would think they would not be inclined to do because they have enough work to do in their own agencies and, as Mr. Funk points out, it would not now be appropriate to do so, under the Economy Act without change.

There are all of these questions that came to mind, and I think all we were trying to say at that point was that we did not know what was proposed in the final report as to exactly how to carry this out, and that there could be problems.

Senator ROTH. Do you have any estimate of how many people we have in these independent IGs or what the resources are.

Mr. ADAIR. I have seen some——

Senator ROTH. And when do you decide that enough is enough, in other words cost effectiveness.

Mr. ADAIR. I do not know the exact number. I have seen several numbers. I have seen the number 7,000, I have seen higher numbers than that if you include all of the Army, Navy, and Air Force auditors as if they were part of the Defense IG, which they are not, but there are thousands of auditors involved in government. I think that the IGs for the most part have reached a level where they can carry out their own duties appropriately, although perhaps not those of other agencies, the smaller agencies as proposed under the cognizant provision here.

Senator ROTH. Certainly, if we are going to create these new IGs, as I think we should, it is important that they have adequate resources.

You also say incentives and resources, and by incentives you mean that if they are reimbursed, would that help provide the incentives or—

Mr. ADAIR. Again, thinking of them being at a certain number, let us say that an IG has 100 people in his shop, and was at a point where he had to provide 10 or 15 of those to cover the 40 small agencies. Even if the IG were reimbursed, then it would be a situation where he would be left with just 85 of his own resources. So there would have to be an augmentation situation, where the IG would say give us 115 and we will do it.

Assuming a constant level of auditors and the need to take some of them to audit the smaller agencies, there might not be the incentive for the IGs to want to do that, to use their resources for that purpose. I think that is what we were driving at.

Senator ROTH. Thank you, Mr. Adair.

Chairman GLENN. Thank you, Senator Roth.

Mr. Clark, you have been very patient and quiet. Do you have anything to add here before we get on to the next panel here?

Mr. CLARK. No, I do not, Mr. Chairman.

Chairman GLENN. We welcome any comments you might have. Thank you very much, Mr. Adair and Mr. Clark.

Mr. ADAIR. Thank you, Mr. Chairman.

Chairman GLENN. The next panel is Mr. Stephen J. Markman, Assistant Attorney General, Office of Legal Policy, Department of Justice, accompanied by Michael E. Shaheen, Jr., Counsel, Office of Professional Responsibility, Department of Justice.

Mr. Markman and Mr. Shaheen, welcome.

TESTIMONY OF STEPHEN J. MARKMAN, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE, ACCOMPANIED BY MICHAEL E. SHAHEEN, JR., COUNSEL, OFFICE OF PROFESSIONAL RESPONSIBILITY

Mr. MARKMAN. Thank you very much, Mr. Chairman. I am pleased to appear before the Committee today in connection with these hearings on S. 908, the Inspector General Act Amendments of 1987.

I would respectfully request that my entire statement be placed in the record.¹

¹ See p. 105.

Chairman GLENN. It will be included in the record and you may proceed with an abridged version.

Mr. MARKMAN. Thank you.

I have been invited, Mr. Chairman, to explain the reasons for our continued opposition to proposals to establish an Inspector General in the department and to discuss the status and structure of what we believe are the effective existing internal audit and investigative units in the Department of Justice, which presently deal with financial, professional, and criminal misconduct.

When the Inspector General Act of 1978 was enacted, Congress intentionally did not provide for the establishment of an Inspector General in the Justice Department, because, in the words of this Committee, it would be "undesirable to superimpose an Inspector General who is basically a law enforcement official on law enforcement agencies." The department is, of course, almost entirely a law enforcement agency, not a financial or grantmaking agency. Its budget does not approach the magnitude of most agencies with Inspectors General; the matters that Inspectors General focus on with success in other agencies—such as the operations of spending, income-transfer, and grantmaking programs—either do not exist at, or are incidental to the primary mission of, the Department of Justice.

Our review of past proposals and the recent report of the General Accounting Office that advocates establishing an Inspector General at the department leads us again, however, to the conclusion that the drawbacks of establishing an Inspector General in the department would far outweigh any advantages. In any event, such a proposal would be unwarranted, in our judgment, in light of the effective mechanisms already in place in the department to deal with financial, professional, and criminal misconduct.

The establishment of a statutory Inspector General at the Justice Department would uniquely and seriously undermine, we believe, the Attorney General's authority and powers as the Nation's chief law enforcement officer in at least three ways:

First, it would impose an Inspector General on the law enforcement authority of the Attorney General; second, it would allow the Inspector General to interfere with or jeopardize ongoing external investigations and prosecutions; and, third, it may require or permit the Inspector General to disclose sensitive or confidential information.

Let me discuss these in turn briefly, if I might. First, extension of the Inspector General Act to the Justice Department would, we believe, unwisely impose an Inspector General on the Attorney General's authority. The Attorney General is the Nation's chief law enforcement officer, and the Office of the Attorney General is, after the President, the final and ultimate repository of Federal prosecutorial power.

The Attorney General's powers of investigation, indictment and prosecution are far broader than those of any Inspector General. To fulfill these responsibilities, broad-based discretion must be entrusted to the Attorney General; clear authority and accountability are imperative in the enforcement of Federal law. The Attorney General, accordingly, is fully responsible under current law to see

that the department's activities are conducted within the confines of the Constitution and the law.

Extending the Inspector General Act to the department would diffuse these responsibilities and lessen accountability. For example, under the Act, the Inspector General would provide "policy direction for and * * * conduct, supervise, and coordinate investigations relating to the programs and operations" of the department. The Inspector General would have authority to make whatever investigations he or she might deem appropriate, and the Attorney General would be without authority to halt or redirect those investigations.

Heads of other agencies where statutory Inspectors General already exist, of course, face similar intrusions on their authority. But the authority of those agency heads to investigate possible wrong doings is not nearly as central to their agencies' missions as it is to the Attorney General, who, as stated previously, is the Nation's chief law enforcement officer.

As the Nation's chief law enforcement officer, the Attorney General has investigative and prosecutorial responsibilities with respect to all Federal laws, including those that apply to the department's programs and operations. Thus, lodging principal investigative authority in a Justice Department Inspector General with respect to the department's programs and operations would directly conflict with investigative responsibilities committed to the Attorney General under present law.

For example, if the Attorney General determined that prosecutions should be directed against certain types of waste, fraud, abuse, and misconduct within the department, he might not be able effectively to carry out such an initiative if the audit and investigative units came under the Inspector General's jurisdiction. In that circumstance, the Attorney General would be deprived of the ultimate authority to order the audit and investigative units to direct or redirect their efforts towards the areas of concern he had identified. It would be ironic indeed if the Attorney General, who is charged with seeing that the laws are obeyed throughout the Nation, were divested of the principal responsibility and ability to see that the law was obeyed within his own department.

In sum, to deny the Attorney General full and unfettered power to determine the limits of such investigations, prosecutions and litigation would preclude the exercise of the historical responsibilities of the office and cloud accountability for department activities. We think the Committee was correct in 1978 when it concluded that it was "undesirable to impose an Inspector General, who is basically a law enforcement official, on a law enforcement agency," and established them instead at agencies where grant making or spending played a more central role.

Second, an Inspector General could interfere with ongoing external investigations and prosecutions. An Inspector General could create review processes of prosecutorial decisions separate from existing procedures. Such additional review procedures would be unnecessary and could diminish the flexibility essential to the exercise of prosecutorial discretion. U.S. Attorneys must handle a myriad of complex investigations and prosecutions in a criminal justice system that is already taxed at all levels and, to do so, must

be given a large degree of discretion in their decisionmaking within the confines of constitutional and statutory limitations as well as department policy. Subjecting their decisions further to Inspector General review would undermine that discretion and their ability to take prompt and decisive prosecutorial action.

The GAO report, although not suggesting specific statutory language, also acknowledged the department's concern on this point. It concluded, and I quote, Mr. Chairman:

We believe that reviews of prosecutorial discretion are an appropriate role for Justice's Office of Professional Responsibility and should be exercised for the Attorney General primarily by that office. However, we do not believe that the Inspector General should be precluded from conducting reviews of this nature if a unique set of circumstances warrants further review.

Thus, while the GAO report conceded that separate review by the Inspector General of prosecutorial decisions is inappropriate, it would leave that power in the Inspector General to exercise when warranted. The Inspector General would have the sole discretion, apparently with no statutory standards for guidance, to exercise that power, leaving open the possibility of unjustified intrusions into prosecutorial and litigation decisions.

The GAO report also maintained that it would be appropriate for the Inspector General to review "cases to determine whether they were conducted effectively * * * in accordance with established policy * * * within the time frames established by law or policy, or whether the required approvals were obtained." It will surely be difficult in practice to distinguish between that type of review and the "routine review the exercise of legal judgment in individual cases" that the House report maintained was unintended and not expected.

Moreover, because procurement and other spending matters constitute such a small portion of the department's activities, we think that the temptation for a Justice Department Inspector General to branch out and investigate and review prosecutorial discretion may well be irresistible.

Additionally, the language of the Inspector General Act authorizing the Inspector General to "provide policy direction for, and to conduct, supervise, and coordinate * * * investigations" arguably may be broad enough to allow an Inspector General to inject himself or herself into the process of approving, renewing, and reviewing undercover operations. This leaves open the possibility that, under legislation modeled on H.R. 3077, in the House, for example, the Inspector General could intrude and potentially disrupt ongoing undercover operations, and the Attorney General would be powerless to stop any such activity.

Third, Mr. Chairman, we believe that the Inspector General threatens to release the disclosure of confidential information in the context of the Justice Department. The Inspector General Act requires submission to Congress of a semi-annual report summarizing the activities of each Inspector General. Sixty days thereafter, the report is to be made public. While the Act precludes public disclosure of information from "an ongoing criminal investigation," the Act does not expressly protect against disclosure to Congress. Of course, the only way to protect sensitive information from disclosure is to limit those with access to it and insure that the

agency holding the information has control over its use and dissemination. If such information were contained in Inspector General reports to Congress, the risk of compromise would be greatly increased, we believe, because submission to Congress of itself would increase the number of people with access to the reports.

Further, even the protection against dissemination to the general public is not complete, inasmuch as "information with respect to a party of an ongoing criminal investigation" may be disclosed "if such information has been included in a public record." Sometimes, however, such public records may not be particularly accessible and the bits and pieces of information that an Inspector General report might compile and disclose may be spread across many such public records. The compilation of such information and its disclosure by the Inspector General could damage the department's law enforcement efforts.

Thus, we believe that the disadvantages of establishing an Inspector General would greatly outweigh any advantages and, moreover the creation of an Inspector General would be unwarranted because, as our report discusses in some more detail, the department has established comprehensive, coordinated, independent, and effective mechanisms to deal with financial, professional, and criminal misconduct.

Thank you, Mr. Chairman.

Chairman GLENN. Thank you, Mr. Markman.

Let me comment first on your comment that you are mainly a law enforcement agency, not an agency with hard budgeting responsibilities. I would take some sort of an exception to that. The staff tells me you have about 63,000 employees and a \$3.8 billion budget in 1986.

Mr. MARKMAN. Yes, sir.

Chairman GLENN. Now, that is no small potatoes.

Mr. MARKMAN. No, sir, it is not.

Chairman GLENN. It is a big agency and a lot of money involved. We are concerned about auditing far, far, far smaller units than that across our government, and the fact that Justice is a law enforcement agency does not mean that there cannot be from time to time the potential at least for misuse of funds of some kind in some function that the department oversees.

Let me ask a series of questions here, though. The department has asserted that the Office of Professional Responsibility currently has overall responsibility for directing efforts by investigative and auditing units against fraud, waste, and abuse. As the head of OPR, do you agree with that?

Mr. MARKMAN. Well, if I might defer to Mr. Shaheen, who is the head of OPR, I would appreciate that.

Mr. SHAHEEN. Yes, Mr. Chairman, I would agree with that.

Chairman GLENN. Of the 6 lawyers who form the full-time professional staff of the OPR, how many are expert in the audit area.

Mr. SHAHEEN. I would say all of them are experts.

Chairman GLENN. All 6 of them?

Mr. SHAHEEN. All of them coordinate the various audit components throughout the department, Mr. Chairman.

Chairman GLENN. Of course, the people in OPR and the Director of OPR are not appointed by the President and confirmed by the Senate.

Mr. SHAHEEN. Right.

Chairman GLENN. The Attorney General can fire either one of you tomorrow if he had any reason to or wanted to, is that correct?

Mr. SHAHEEN. Well, Mr. Chairman, that is an interesting point. I note and invite your recollection to Senator Roth's comment, and yours as well, I believe, at the outset of the hearing that the statutory form provides a mechanism that prohibits the abolition of Inspectors General at whim. As I recall, one of the first acts of this Administration was to fire all of them. I was not fired. I do not prefer that kind of security. I serve at the pleasure of the Attorney General and my own pleasure.

Chairman GLENN. All right, let us presume your own pleasure means you would like to keep your job for a little while. [Laughter.]

Mr. SHAHEEN. Sometimes that is debatable.

Chairman GLENN. All right, I will go along with you on that, but the fact still remains that the Attorney General could walk into your office tomorrow morning and fire you if he so desired, is that correct?

Mr. SHAHEEN. I believe he has to have cause.

Chairman GLENN. He would have to have cause?

Mr. SHAHEEN. Yes, sir.

Chairman GLENN. He could not——

Mr. SHAHEEN. I am a career reserve SES.

Chairman GLENN. OK. Under regular civil service reasons, that is fine, but as far as the Office of the OPR within the Attorney General's Office, if the Attorney General wished to abolish that function he could do so, is that correct or not?

Mr. SHAHEEN. Yes, sir, he could. It is in regulation form. He would have to abolish the regulation to do that.

Chairman GLENN. He could do that. It is his own regulation, is that correct?

Mr. SHAHEEN. Yes, sir, it is a Federal regulation.

Chairman GLENN. I am having trouble getting this out of you. He could fire you if he wanted to or abolish your department if he wanted to and really wanted to get rid of it, is that correct?

Mr. SHAHEEN. He could.

Chairman GLENN. He could, that is right. [Laughter.]

Who evaluates your performance and how often is this done, both of you.

Mr. MARKMAN. Who evaluates my performance or OPR's performance?

Chairman GLENN. Your performance and then OPR.

Mr. MARKMAN. Well, I do report directly to the Attorney General, so the Attorney General would be the one who would review my performance.

Chairman GLENN. Is that reviewed annually or every six months, or what is the——

Mr. MARKMAN. I think it is the same kind of review that you would have with people who work with you; it is on-going review and there is no——

Chairman GLENN. There is no stated time period, no——

Mr. MARKMAN. No, sir.

Chairman GLENN. It does not come up on a regular semiannual basis or anything like that?

Mr. MARKMAN. No, sir.

Chairman GLENN. Okay. How frequently does the OPR—I am sorry, go ahead.

Mr. SHAHEEN. The Attorney General is the official to whom I report. I would report to him, unless he is under investigation, in which case I would report to the Deputy Attorney General. The Attorney General, if he is not under investigation by the office, would be my evaluating official. That occurs annually. My evaluation of him occurs more often than that.

I have testified in oversight hearings probably seven or eight times before various committees of the House and the Senate, so I hold myself accountable to you all, and we have been overseen several times by GAO and we feel that we are responsible to various elements of oversight in the Executive and Legislative Departments.

Chairman GLENN. Do you have a separate appropriation account in the department's budget? How are you budgeted for your function?

Mr. SHAHEEN. OPR?

Chairman GLENN. Yes.

Mr. SHAHEEN. Yes, sir, we do.

Chairman GLENN. A separate appropriation account?

Mr. SHAHEEN. Yes, sir.

Chairman GLENN. Is it an adequate budget?

Mr. SHAHEEN. It is indeed.

Chairman GLENN. You do not need any more resources to carry out your responsibilities within the department?

Mr. SHAHEEN. No, sir. We are authorized one figure and we are always provided an actual figure which exceeds the authorization, and that is because we have an agreement with the Attorney General and the Deputy, and that is as long as he can travel worldwide to conferences, as long as we need money we can dip into the same fund and that is the general administration fund.

Chairman GLENN. Okay. So you have all the people you feel you need?

Mr. SHAHEEN. Well, Mr. Chairman, we may be asking for an additional paralegal and an additional lawyer.

Chairman GLENN. OK.

Mr. SHAHEEN. Incidentally, Mr. Chairman, we have expanded to in excess of 150 people, mostly attorneys. We are authorized under the regs and have never been denied the authority to detail people of our own choosing from every Executive Branch department, IRS, FBI, and have done so on numerous occasions and issued public reports on those investigations.

Chairman GLENN. Let me ask this, and this does not impugn your personal integrity or reputation, which is very good, but let me ask what protection do you have from being fired by the Attorney General? If you really got aggressive and you were an internal watchdog and you found something really going on at the top levels of Justice, what is to prevent you from just being terminated?

Mr. SHAHEEN. Mr. Chairman, can I give you some—I will answer that question simply and I will answer anecdotally. Would you like both answers?

Chairman GLENN. Feel free.

Mr. SHAHEEN. We pursued the investigation of Billy Carter in which we accused Mr. Civiletti in our report that was published of—I think twice we said he lied when he told the press he did not discuss the President's brother with him at the White House. And the third time, instead of using the word "lie" again, we used the word "dissembled," when he was at the airport and was asked did he dissemble, he said of course he has never dissembled in his life, he turned to his administrative aide and said what does that mean, he said it means lie. [Laughter.]

That was a published report. We also chastised the President for failing to cooperate with us and submit to interviews that had been prescheduled.

With respect to Griffin Bell, we investigated the preemptory dismissal of a U.S. Attorney in Pennsylvania, Marston, that was alleged to be inspired for political purposes, and found that that was not the case.

Of more particular interest, we disallowed William French Smith's—in a public report—\$50,000 severance pay from Jergensen Steel. That was not very popular with Mr. Smith. That was found in technical violation of 18 U.S.C. § 209. It did not, however, trigger the Independent Counsel Act. We also had found Mr. William French Smith had allowed his wife the unauthorized use of a government vehicle and assessed costs, after having consulted with various IGs on how they would compute them, he paid the government \$11,217.

I might, incidentally, add that when we consulted with an Inspector General, one of the three that we consulted with, we identified the subject of our investigation as a presidential appointee, not as the Attorney General, and he started chuckling when we were discussing the problem, and my lawyer asked him why he chuckled, and he said, "Well, we wouldn't touch this with a ten-foot pole."

Chairman GLENN. Well, what you are saying—

Mr. SHAHEEN. William French Smith paid \$11,217.

One last point, Mr. Smith had very favorable four-to-one and five-to-one tax shelters when they were discovered on his financial disclosure form. They were inconsistent with the IRS rulings that he, as the chief law enforcement officer in the land, was required to uphold and they were disallowed in full.

None of these opinions or decisions were popular. He could have fired me, I suppose. All of these could have fired me, but they have not. I am prepared to leave. My bags are packed and I am ready to go at any time.

Chairman GLENN. Well, I am not proposing that you pack your bags or anything like that at this point. But what you are saying is you have the authority to conduct any investigation you deem necessary, right?

Mr. SHAHEEN. By administrative process and grand jury. Maybe that is the disincentive to my dismissal. As someone said in a briefing paper, if they are going to fire me, the Attorney General had

better do it before he has been confirmed, because as sure as the world there is going to be a citizen complaint about him before he comes in.

Chairman GLENN. Maybe the next question is a bag-packer, then. Have you investigated Wedtech and Mr. Meese?

Mr. SHAHEEN. That is a pending investigation, Mr. Chairman. Have I? Did I?

Chairman GLENN. Yes.

Mr. SHAHEEN. We have participated in that. I have been consulted, I have been privy to every turn in the event as appropriate, as he is a department employee, the chief department employee. I have been consulted at every turn.

Chairman GLENN. But have you investigated yourself, or your officer, OPR?

Mr. SHAHEEN. To the extent that it was not already delegated to the Independent Counsel, yes, and that was referred by our office to Public Integrity to the Independent Counsel.

Chairman GLENN. Now that the investigation is ongoing, now that that has been triggered, are you out of that loop now—

Mr. SHAHEEN. Yes, sir.

Chairman GLENN [continuing]. Or do you continue to work with them?

Mr. SHAHEEN. We would continue to work with them as they request it, but we are out of it together.

The same happened with the Southern air crash, the Hausenfus crash, the so-called 10-day delay and then the 23-day delay that the FBI was asked to impose on the investigation in October, late October.

Chairman GLENN. Let me ask this: The testimony shows that there are 8 bureau-level audit units subject to the general oversight of the department's audit staff located in the Justice Management Division. According to a 1986 Department of Justice Order, all of these audit units are required to report to the Office of Professional Responsibility any matters involving suspected waste, fraud or abuse.

However, OPR has no authority to initiate or conduct an audit at the department or bureau level, is that correct?

Mr. SHAHEEN. No, sir, that is not correct.

Chairman GLENN. You do have authority then, you say?

Mr. SHAHEEN. Indeed we do and have.

Chairman GLENN. You can conduct any audit you want up to the bureau level, up to the Attorney General himself?

Mr. SHAHEEN. Absolutely.

Chairman GLENN. Including the Attorney General?

Mr. SHAHEEN. Absolutely.

Chairman GLENN. Okay.

Circular A-73 requires that the department designate an official to be responsible for coordinating audit activities of the department. Testimony before a House subcommittee last year by OMB identified the Assistant Attorney General for Administration, a program manager, for this function. Circular A-50 requires that the department designate a single top manager to oversee follow-up. It appears that the department may not now have a single indi-

vidual responsible for this job, even though last year OMB stated it was the Deputy Attorney General.

As of today, who in the department are the responsible officials for A-73 and A-50 purposes?

Mr. SHAHEEN. I believe it is the Deputy Attorney General, Mr. Chairman.

Chairman GLENN. Who?

Mr. SHAHEEN. The Deputy Attorney General, Arnold Burns.

Chairman GLENN. Is that correct, Mr. Markman?

Mr. MARKMAN. Yes, sir. Our auditing functions, as I think you know, are coordinated by the audit staff in our Justice Management Division. We are in the process currently of reorganizing our audit activities in an attempt to restructure them into a single office, much as we have a single office in OPR coordinating the investigation activities. A proposal is currently being considered by the Attorney General that would create an Office of Audit and Review analogous to the Office of Professional Responsibility that would coordinate the auditing activities of the Justice Department, and our auditing coordination activities with OMB.

Chairman GLENN. Well, maybe this is going to alter things somewhat, but that was going to be my next question. It appears that the Department's assignment of audit responsibility is spread among many individuals; how do you reconcile the differing roles assigned to OPR and these other department officials?

Mr. MARKMAN. Well, it is spread among many individuals and many components, Mr. Chairman, but it is coordinated by our Assistant Attorney General for Administration; the audit staff which is coordinated by the Assistant Attorney General for Administration does have full authority over the auditing components that exist in each of the components within the Department of Justice. But because of the concern over appearances that you have noted here, because of the concerns raised by GAO and others, we have attempted to duplicate our activities on the auditing side based upon what we already do as far as our investigative activities. So we will have a counterpart office that will have full auditing review and coordination authority, much as OPR has full authority in the area of investigation of misconduct by employees.

Chairman GLENN. Okay. Just to follow up on that, the Department's audit staff is located in a Program Office and generally reports to a program manager.

Mr. MARKMAN. Yes, sir.

Chairman GLENN. These organizational and reporting deficiencies appear to be clear violations of OMB Circular A-73. Does the Department intend to relocate that audit unit out of the Justice Management Division?

Mr. MARKMAN. Well, I am not sure that I would agree that it is in violation of that circular, in the first place, but, yes, we do intend to locate it outside of the Office of Administration. It will be a totally independent office.

Even under current procedures, I think you know, Mr. Chairman, that, with respect to any audits concerning the Justice Management Division itself, the audit staff would not report to the Assistant Attorney General for Administration, but rather would go to the Deputy Attorney General, I believe.

Chairman GLENN. Will that new unit report on its audit results then directly to the Attorney General or the Deputy Attorney General?

Mr. MARKMAN. Directly to the Attorney General.

Chairman GLENN. To the the AG. All right.

In March 1987, a congressional report claimed that there are systematic failures in the Justice Department's pursuit of major defense procurement fraud cases. That report focused on the department's investigation of serious cost overruns on 14 nuclear ship contracts at Newport News. The report cited divided responsibility and authority, poor supervision, excessive staff turnover and other problems.

In fact, the report indicates that the department allowed the applicable statute of limitations for possible prosecution to expire, effectively terminating the investigation. Now, a similar story could be told about the department's Electric Boat investigation. The question is this: Who has the responsibility for following up on a systematic failure of this type to see that it does not happen again?

Mr. MARKMAN. Well, obviously there are a great many discretionary judgments that have to be made in the normal course of a criminal investigation, Mr. Chairman. To the extent that there are suggestions of impropriety, to the extent that there are suggestions of misconduct, to the extent that there are suggestions of conflict of interest, the Office of Professional Responsibility would have principal authority to review those allegations.

Chairman GLENN. Well, what is to prevent someone, if they wanted to have a coverup of some kind, of just letting the statute run out until the time has lapsed and then nothing can occur?

Mr. MARKMAN. I am sorry, I do not understand that, Mr. Chairman.

Chairman GLENN. Letting the applicable statute of limitations for possible prosecution expire, effectively terminating the investigation, that is one of the allegations that was reported in the press on the Newport News investigation.

Mr. MARKMAN. Well, this would be precisely the kind of thing that the Office of Professional Responsibility would be expected to review, as well as the leadership within the litigating division responsible for the matter. Obviously, I am not suggesting that kind of abuse cannot occasionally take place. All that I am saying is that the department believes we have in place effective mechanisms for dealing with that kind of problem; I think that anybody looking closely at the GAO report will find that there is a total absence of any suggestion that either our auditing or investigating opponents have in fact been derelict in reviewing these kinds of activities within the department.

Chairman GLENN. Mr. Shaheen, do you look at stuff like that? Do you look at things like that, where someone may let a statute of limitations lapse and a major violator apparently got away scot-free? Do you look at that?

Mr. SHAHEEN. We certainly would if it were referred. We try to find them before they are referred, Mr. Chairman. This poses a peculiar problem in that it crosses departmental lines. It involves not only the Criminal Division and DOJ lawyers, but working pursuant to the memorandum of understanding with the Defense Depart-

ment, the Inspector General, there is a great deal of risk involving our office in a matter that has already been mucked around with maybe too many players not knowing exactly what they are doing. Yes, this is something we would look at, especially if it is referred, and we try to revive it on the basis, if we could, of continuing obstruction and fraud in hopes that we could cure the running of the statute.

Chairman GLENN. I am sorry, we are very short on time. We are on five lights and I have to go to the floor and vote, so we are right at the end here anyway. If you can give me a very brief comment on this:

When Mr. Meese conducted his own investigation into the Iran-Contra situation and the principal targets destroyed documents, how do you prevent such documents from being destroyed? What do you do in a case like that? Do you investigate something like that?

Mr. SHAHEEN. Yes, sir.

Chairman GLENN. What is your answer to that? Did you protect such documents from being destroyed in this case.

Mr. SHAHEEN. We would have called the FBI in, Mr. Chairman.

Chairman GLENN. Did you do that in this case?

Mr. SHAHEEN. Well, that part of the investigation, as I understand it, Mr. Chairman, had already been conducted by a senior attorney in the Department, the Attorney General.

Chairman GLENN. Are you free to get into a situation like that if you want to?

Mr. SHAHEEN. I would, yes, indeed, and that is what I averted to before.

Chairman GLENN. Did you get into it?

Mr. SHAHEEN. We did and that has been referred to the Independent Counsel, Judge Walsh.

Chairman GLENN. Did you save some of those documents then from being destroyed?

Mr. SHAHEEN. I believe some of those documents.

Chairman GLENN. Were they turned over to the Independent Counsel?

Mr. SHAHEEN. Everything that we had was turned over, yes, sir.

Chairman GLENN. Are you continuing that investigation?

Mr. SHAHEEN. We are continuing to assist them in every way we can.

Chairman GLENN. All right. Thank you. I am going to have to run here. I thank you all for being here today. We are going to want to work closely with you on consideration of future legislation if we decide to go that route. Our objectives are exactly what we have said repeatedly here, that we just want the government to operate as efficiently as possible, and that includes the Department of Justice. We think it is better to lock these things in so that you cannot be fired, Mr. Shaheen, no matter where you investigate. [Laughter.]

And so we do not want you to have to pack your bags every time you start an investigation over there. We will insert into the record a letter from the Committee to Attorney General Messe dated

April 20, 1987,¹ and the Justice Department response dated May 12, 1987.² We will submit in writing any other questions for the witnesses.

Thank you all very much.

Mr. MARKMAN. Thank you.

Mr. SHAHEEN. Thank you, Mr. Chairman.

Chairman GLENN. We are adjourned subject to the call of the Chair.

[Whereupon, at 4:30 p.m., the Committee was adjourned, subject to call of the Chair.]

¹ See p. 153.

² See p. 156.

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

100TH CONGRESS
1ST SESSION

S. 908

To amend the Inspector General Act of 1978.

IN THE SENATE OF THE UNITED STATES

APRIL 3 (legislative day, MARCH 30), 1987

Mr. GLENN (for himself, Mr. ROTH, Mr. CHILES, Mr. PRYOR, Mr. SASSER, Mr. HEINZ, Mr. LEVIN of Michigan, Mr. RUDMAN, Mr. BINGAMAN, Mr. MITCHELL, Mr. STEVENS, Mr. NUNN, Mr. TRIBLE, and Mr. COHEN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend the Inspector General Act of 1978.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Inspector General Act
4 Amendments of 1987".

5 CONFORMATION OF AUTHORITIES OF EXISTING OFFICES
6 OF INSPECTORS GENERAL

7 SEC. 2. (a) Section 2(1) of the Inspector General Act of
8 1978 is amended to read as follows:

1 “(1) to conduct and supervise audits and investi-
2 gations relating to the programs and operations of the
3 establishments listed in section 11(2);”.

4 (b) Section 9(a)(1) of such Act is amended—

5 (1) by striking out subparagraph (I);

6 (2) by redesignating subparagraphs (M) and (N) as
7 subparagraphs (O) and (P), respectively;

8 (3) by redesignating subparagraphs (J) through (L)
9 as subparagraphs (K) through (M), respectively;

10 (4) by redesignating subparagraphs (E) through
11 (H) as subparagraphs (G) through (J), respectively;

12 (5) by inserting after subparagraph (D) the follow-
13 ing new subparagraphs:

14 “(E) of the Department of Energy, the Office
15 of Inspector General (as established by section
16 208 of the Department of Energy Organization
17 Act);

18 “(F) of the Department of Health and
19 Human Services, the Office of Inspector General
20 (as established by title II of Public Law 94-
21 505);”; and

22 (6) by inserting after subparagraph (M) (as redes-
23 ignated by paragraph (3) of this subsection) the follow-
24 ing new subparagraph:

1 “(N) of the Railroad Retirement Board, the
2 Office of Inspector General (as established by sec-
3 tion 23 of the Railroad Retirement Act of
4 1974);”.

5 (c) Section 11 of such Act is amended—

6 (1) by inserting “Energy, Health and Human
7 Services,” after “Education,” each place it appears in
8 paragraphs (1) and (2);

9 (2) by striking out “Community Services,” in
10 paragraph (1);

11 (3) by striking out “the Community Services Ad-
12 ministration,” in paragraph (2);

13 (4) by inserting “or the Chairman of the Railroad
14 Retirement Board;” before “as the case may be” in
15 paragraph (1); and

16 (5) by inserting “the Railroad Retirement Board,”
17 after “National Aeronautics and Space Administra-
18 tion,” in paragraph (2).

19 (d)(1)(A) Section 208 of the Department of Energy Or-
20 ganization Act is repealed.

21 (B) The table of contents in the first section of such Act
22 is amended by striking out the item relating to section 208.

23 (2) Title II of Public Law 94-505 is repealed.

24 (3) Section 23 of the Railroad Retirement Act of 1974
25 is repealed.

1 (e) The transfer of functions under the amendments
2 made by subsection (b) shall not affect any individual, who on
3 the date of enactment of this Act, is serving as the Inspector
4 General of the Department of Energy, the Department of
5 Health and Human Services, or the Railroad Retirement
6 Board. Any such individual shall continue to serve in such
7 position until such individual dies, resigns, or is removed from
8 office in accordance with the Inspector General Act of 1978.

9 UNIFORM SALARIES FOR INSPECTORS GENERAL

10 SEC. 3. (a) Section 5315 of title 5, United States Code,
11 is amended by adding at the end thereof the following new
12 paragraphs:

13 "Inspector General, Department of Commerce.

14 "Inspector General, Department of the Interior.

15 "Inspector General, Agency for International Develop-
16 ment.

17 "Inspector General, Environmental Protection Agency.

18 "Inspector General, General Services Administration.

19 "Inspector General, National Aeronautics and Space
20 Administration.

21 "Inspector General, Railroad Retirement Board.

22 "Inspector General, Small Business Administration."

23 (b) Section 5316 of such title is amended by striking out
24 the paragraphs relating to—

25 (1) the Inspector General of the Department of
26 Commerce;

1 (2) the Inspector General of the Department of
2 the Interior;

3 (3) the Inspector General of the Agency for Inter-
4 national Development;

5 (4) the Inspector General of the Community Serv-
6 ices Administration;

7 (5) the Inspector General of the Environmental
8 Protection Agency;

9 (6) the Inspector General of the General Services
10 Administration;

11 (7) the Inspector General of the National Aero-
12 nautics and Space Administration; and

13 (8) the Inspector General of the Small Business
14 Administration.

15 ESTABLISHING AN OFFICE OF INSPECTOR GENERAL IN
16 THE DEPARTMENT OF THE TREASURY, THE FEDERAL
17 EMERGENCY MANAGEMENT AGENCY, THE NUCLEAR
18 REGULATORY COMMISSION, AND THE OFFICE OF PER-
19 SONNEL MANAGEMENT

20 SEC. 4. (a) Section 9(a)(1) of the Inspector General Act
21 of 1978 (as amended by section 2(b) of this Act) is further
22 amended—

23 (1) by redesignating subparagraphs (O) and (P) (as
24 redesignated by paragraph (2) of section 2(b) of this
25 Act) as subparagraphs (S) and (T), respectively;

1 (2) by redesignating subparagraph (N) (as added
2 by paragraph (6) of section 2(b) of this Act) as subpara-
3 graph (R);

4 (3) by redesignating subparagraphs (K), (L), and
5 (M) (as redesignated by paragraph (3) of section 2(b) of
6 this Act) as subparagraphs (L), (N), and (O), respec-
7 tively;

8 (4) by inserting after subparagraph (J) (as redesign-
9 ated by paragraph (4) of section 2(b) of this Act) the
10 following new subparagraph:

11 “(K) of the Department of the Treasury, the
12 office of that department referred to as the ‘Office
13 of Inspector General’, and that portion of each of
14 the offices of that department referred to as the
15 ‘Office of Internal Affairs, Bureau of Alcohol, To-
16 bacco, and Firearms’, the ‘Office of Internal Af-
17 fairs, United States Customs Service’, the ‘Office
18 of Inspections, Internal Revenue Service’, and the
19 ‘Office of Inspections, United States Secret Serv-
20 ice’ which is engaged in internal audit activities;”;

21 (5) by inserting after subparagraph (L) (as redesign-
22 ated by paragraph (3) of this subsection) the following
23 new subparagraph:

1 “(M) of the Federal Emergency Management
2 Agency, the office of that agency referred to as
3 the ‘Office of Inspector General’;” and
4 (6) by inserting after subparagraph (O) (as redes-
5 ignated by paragraph (3) of this subsection) the follow-
6 ing new subparagraphs:

7 “(P) of the Nuclear Regulatory Commission,
8 the office of that commission referred to as the
9 ‘Office of Inspector and Auditor’;

10 “(Q) of the Office of Personnel Management,
11 the offices of that agency referred to as the ‘Office
12 of Inspector General’, the ‘Insurance Audits Unit,
13 Retirement and Insurance Group’, and the ‘Pro-
14 gram Integrity Section of the Retirement Inspec-
15 tion Branch, Retirement and Insurance Group’;”.

16 (b)(1) Section 11(1) of such Act (as amended by section
17 2(c) of this Act) is further amended—

18 (A) by striking out “or Transportation or” and in-
19 serting in lieu thereof “Transportation, or the Treas-
20 ury;”

21 (B) by striking out “, or the Director of the
22 United States Information Agency” and inserting in
23 lieu thereof a semicolon and “the Director of the Fed-
24 eral Emergency Management Agency, the Office of

1 Personnel Management, or the United States Informa-
2 tion Agency;"; and

3 (C) by inserting "the Nuclear Regulatory Com-
4 mission or" before "the Railroad Retirement Board"
5 (as added by section 2(c)(4) of this Act).

6 (2) Section 11(2) of such Act (as amended by sec-
7 tion 2(c) of this Act) is further amended—

8 (A) by striking out "or Transportation" and in-
9 serting in lieu thereof "Transportation, or the Treas-
10 ury;";

11 (B) by inserting "the Federal Emergency Manage-
12 ment Agency," after "the Environmental Protection
13 Agency,"; and

14 (C) by inserting "the Nuclear Regulatory Com-
15 mission, the Office of Personnel Management," after
16 "the National Aeronautics and Space Administration,".

17 (c) The Inspector General Act of 1978 is amended by
18 inserting after section 8A the following new sections:

19 "SPECIFIC PROVISIONS CONCERNING THE NUCLEAR
20 REGULATORY COMMISSION

21 "SEC. 8B. (a) The Chairman of the Commission may
22 delegate the authority specified in the second sentence of sec-
23 tion 3(a) to another member of the Nuclear Regulatory Com-
24 mission, and shall not delegate such authority to any other
25 officer or employee of the Commission.

1 “(b) Whenever the Inspector General of the Commis-
2 sion has reasonable grounds to believe there has been a viola-
3 tion of Federal criminal law, the Inspector General shall
4 report to the Attorney General in accordance with section
5 4(d), and neither the Chairman nor any other member of the
6 Commission shall prevent or prohibit the Inspector General
7 from initiating, carrying out, or completing any such report.

8 “(c) In addition to the other duties and responsibilities
9 specified in this Act, the Inspector General of the Commis-
10 sion shall have the authority to perform audits and internal
11 investigations of the activities of the Office of Investigations
12 of the Commission.

13 “(d) The Director of the Office of Investigations of the
14 Commission shall report to and be under the general supervi-
15 sion of the Chairman and other members of the Commission,
16 but shall not report to, or be subject to supervision by, any
17 other officer or employee of the Commission, except as pro-
18 vided in subsection (c). Neither the Chairman nor any other
19 member of the Commission may prevent or prohibit the Di-
20 rector of the Office of Investigations from initiating, carrying
21 out, or completing any investigation.

22 “(e) Whenever the Director of the Office of Investiga-
23 tions of the Commission has reasonable grounds to believe
24 there has been a violation of Federal criminal law, the Direc-
25 tor shall report such violation to the Attorney General. Nei-

1 ther the Chairman nor any other member of the Commission
2 shall prevent or prohibit the Director from initiating, carrying
3 out, or completing any such report.

4 "SPECIAL PROVISIONS REGARDING THE DEPARTMENT OF
5 THE TREASURY

6 "SEC. 8C. (a) In carrying out the duties and responsibil-
7 ities specified in this Act, the Inspector General of the De-
8 partment of the Treasury shall have general oversight re-
9 sponsibility for the internal investigations performed by the
10 Office of Internal Affairs of the Bureau of Alcohol, Tobacco
11 and Firearms, the Office of Internal Affairs of the United
12 States Customs Service, the Office of Inspections of the In-
13 ternal Revenue Service, and the Office of Inspections of the
14 United States Secret Service. The head of each such office
15 shall periodically report to the Inspector General the signifi-
16 cant investigative activities currently being carried out by
17 such office.

18 "(b) Notwithstanding subsection (a), the Inspector Gen-
19 eral of the Department of the Treasury may conduct the in-
20 vestigation of any officer or employee of such Department
21 if—

22 "(1) the Secretary of the Treasury or the Deputy
23 Secretary of the Treasury directs the Inspector Gener-
24 al to conduct an investigation;

25 "(2) the investigation concerns senior officers or
26 employees of the Department of the Treasury, includ-

1 ing officers appointed by the President, members of the
2 Senior Executive Service, and individuals in positions
3 classified at grade GS-15 of the General Schedule or
4 above; or

5 "(3) the investigation involves alleged notorious
6 conduct or any other matter which, in the opinion of
7 the Inspector General, is especially sensitive or of de-
8 partmental significance.

9 "(c) If the Inspector General of the Department of the
10 Treasury initiates an investigation under subsection (b), and
11 the officer or employee of the Department of the Treasury
12 subject to investigation is employed by or attached to a
13 bureau or service referred to in subsection (a), the Inspector
14 General shall provide the Secretary of the Treasury or the
15 Deputy Secretary of the Treasury and the head of the office
16 of such bureau or service referred to in subsection (a) with
17 written notice that the Inspector General has initiated such
18 an investigation. If the Inspector General issues a notice
19 under the preceding sentence concerning the investigation of
20 an officer or employee, no other investigation shall be initi-
21 ed into the matter under investigation by the Inspector Gen-
22 eral and any other investigation of such matter shall cease."

23 (d) Section 5315 of title 5, United States Code (as
24 amended by section 3(a) of this Act), is further amended by
25 adding at the end thereof the following new items:

1 "Inspector General, Department of the Treasury,

2 "Inspector General, Federal Emergency Management
3 Agency.

4 "Inspector General, Nuclear Regulatory Commission.

5 "Inspector General, Office of Personnel Management.".

6 REQUIREMENTS AND PROTECTIONS FOR AUDIT AND

7 INVESTIGATION UNITS

8 SEC. 5. (a) The Inspector General Act of 1978 (as
9 amended by section 4(c) of this Act) is further amended by
10 inserting after section 8C the following new section:

11 "PROTECTIONS AND REQUIREMENTS FOR AUDIT AND

12 INVESTIGATION UNITS AT FEDERAL ENTITIES

13 "SEC. 8D. (a) An internal audit unit established in a
14 Federal entity shall be responsible for the conduct of audits
15 and investigations of the programs and operations of such
16 entity in accordance with the requirements of this section.

17 "(b)(1) After the date which is 180 days after the date of
18 enactment of this section, there shall be no more than one
19 internal audit unit in any Federal entity. The head of the
20 Federal entity shall transfer to the internal audit unit estab-
21 lished in such entity the offices, units, or other components,
22 or functions, powers or duties thereof, that the head of the
23 Federal entity determines are properly related to the func-
24 tions of the internal audit unit and would, if so transferred,
25 further the purposes of this section. There shall not be trans-

1 ferred to an internal audit unit any program operating
2 responsibilities.

3 “(2) If, after the date which is 180 days after the date of
4 enactment of this section, there is a Federal entity in which
5 there is no internal audit unit, the head of the Federal entity
6 shall prepare and transmit to the Comptroller General of the
7 United States and the Director of the Office of Management
8 and Budget a notice which—

9 “(A) states that such an internal audit unit does
10 not exist in such entity; and

11 “(B) specifies the action being taken by the head
12 of such entity to ensure that adequate audits are con-
13 ducted of the programs and operations of such entity.

14 “(3) If, on October 31 of the year after the year in
15 which the head of a Federal entity transmits a notice re-
16 quired under paragraph (2), or on October 31 of any subse-
17 quent year, an internal audit unit does not exist in such
18 entity, the head of such entity shall, on such October 31,
19 transmit to the Comptroller General of the United States and
20 the Director of the Office of Management and Budget a
21 notice which contains the information described in subpara-
22 graphs (A) and (B) of such paragraph.

23 “(c)(1) The internal audit unit director shall be appoint-
24 ed by the head the Federal entity in accordance with the

1 applicable laws and regulations governing appointments
2 within the Federal entity.

3 “(2) Each internal audit unit director shall report to and
4 be under the general supervision of the head of the Federal
5 entity or, to the extent such authority is delegated, the officer
6 next in rank below such head, but shall not report to, or be
7 subject to supervision by, any other officer of such Federal
8 entity. Neither the head of the Federal entity nor the officer
9 next in rank below such head shall prevent or prohibit the
10 internal audit unit director from initiating, carrying out, or
11 completing any audit or investigation, or from issuing any
12 subpoena during the course of any audit or investigation.

13 “(d) If an internal audit unit director is removed from
14 office or is involuntarily transferred to another position or
15 location, the head of the Federal entity shall promptly com-
16 municate the reasons for any such removal or involuntary
17 transfer to both Houses of Congress.

18 “(e)(1) The Chief Postal Inspector of the United States
19 Postal Service shall be the internal audit unit director of the
20 United States Postal Service, and shall be appointed by,
21 report to, and be under the general supervision of the Post-
22 master General. The Chief Postal Inspector may be removed
23 from office or involuntarily transferred to another position or
24 location if the Postmaster General issues a written order
25 stating the reason for such action and such order is ratified by

1 a two-thirds vote of the Governors of the United States
2 Postal Service. If the Chief Postal Inspector is removed or
3 transferred in accordance with this subsection, the Postmas-
4 ter General shall promptly notify both Houses of Congress of
5 the reasons for such removal or transfer.

6 “(2) For purposes of paragraph (1), the term ‘Gover-
7 nors’ has the same meaning as in section 102(3) of title 39,
8 United States Code.

9 “(f) Sections 4, 5, 6, and 7 of this Act shall be applied
10 to each internal audit unit, internal audit unit director, Feder-
11 al entity, and head of the Federal entity (as such terms are
12 defined in subsection (g)) by substituting—

13 “(1) ‘internal audit unit director’ for ‘Inspector
14 General’;

15 “(2) ‘Federal entity’ for ‘establishment’;

16 “(3) ‘internal audit unit’ for ‘Office’; and

17 “(4) ‘head of the Federal entity’ for ‘head of the
18 establishment’.

19 “(g) As used in this section—

20 “(1) the term ‘Federal entity’ means an agency
21 (as defined in section 552(e) of title 5, United States
22 Code), other than (A) an establishment (as defined in
23 section 11(2) of this Act) or part of an establishment,
24 (B) the Executive Office of the President, (C) the
25 agency referred to in section 5102(a)(1)(v) of title 5,

1 United States Code, (D) the General Accounting
2 Office, (E) the Department of Justice, or (F) any entity
3 in the **judicial or** legislative branches of the Govern-
4 ment (including the Administrative Office of the United
5 States Courts and the Architect of the Capitol and any
6 activities under the direction of the Architect of the
7 Capitol);

8 “(2) the term ‘head of the Federal entity’ means
9 the chief executive officer of a Federal entity;

10 “(3) the term ‘internal audit unit’ means a compo-
11 nent of a Federal entity which carries out audits or in-
12 vestigations, or both, of the programs and operations of
13 such entity, but does not include a component that car-
14 ries out audits or investigations as an integral part of
15 the conduct of the programs and operations of such
16 entity; and

17 “(4) the term ‘internal audit unit director’ means
18 the head of an internal audit unit.”.

19 (b) Section 410(b) of title 39, United States Code, is
20 amended—

21 (1) by striking out “and” at the end of paragraph
22 (6);

23 (2) by striking out the period at the end of para-
24 graph (7) and inserting in lieu thereof a semicolon;

1 (3) by striking out "The" in paragraph (8) and in-
2 serting in lieu thereof "the";

3 (4) by striking out the period at the end of para-
4 graph (8) and inserting in lieu thereof a semicolon and
5 "and"; and

6 (5) by adding at the end thereof the following new
7 paragraph:

8 "(9) the provisions of section 8D of the Inspector
9 General Act of 1978."

10 PROVISIONS TO ENSURE UNIFORMITY AND RELIABILITY OF
11 INSPECTOR GENERAL REPORTS

12 SEC. 6. (a) Section 5(a) of the Inspector General Act of
13 1978 is amended—

14 (1) by striking out "and" at the end of paragraph
15 (5); and

16 (2) by striking out paragraph (6) and inserting in
17 lieu thereof the following:

18 "(6) a listing of each audit report issued by the
19 Office during the reporting period and the amounts of
20 ineligible and unsupported costs in each such report,
21 together with a summary of the significant reports;

22 "(7) a detailed statistical analysis of audit reports,
23 depicting in tables arranged by audit status information
24 concerning—

25 "(A) the number of audit reports in each
26 audit status;

1 “(B) the number of such reports for which an
2 audit determination was not made within 6
3 months of the date of issuance of such reports;
4 and

5 “(C) the amounts of ineligible costs, ineligi-
6 ble costs that were disallowed, unsupported costs,
7 and unsupported costs that were disallowed;

8 “(8) a summary of each significant audit report for
9 which a determination was not made within 6 months
10 after the date of issuance of such report and an expla-
11 nation of the reason such determination was not made;

12 “(9) a description of, and explanation of the rea-
13 sons for, any significant revised audit determinations
14 made during the reporting period; and

15 “(10) information concerning any significant audit
16 determination with which the Inspector General is in
17 disagreement.”.

18 (b) Section 5 of such Act is further amended by redesi-
19 gnating subsection (e) as ~~subsection~~ (f) and by inserting after
20 subsection (d) the following new subsection:

21 “(e)(1) The head of each establishment shall, not later
22 than April 30 and October 31 of each year, prepare semian-
23 nual reports listing each audit report made by that establish-
24 ment’s Office of Inspector General which was not resolved

1 within one year after the date on which an audit determina-
2 tion was made on such report. Such reports shall include—

3 “(A) an explanation of the reason such audit was
4 not resolved; and

5 “(B) the amount of disallowed costs that are
6 under administrative or judicial appeal and the amount
7 of disallowed costs returned or offset by the govern-
8 ment.

9 “(2) The semiannual reports of the head of each estab-
10 lishment under this subsection shall be transmitted by such
11 head to the appropriate committees and subcommittees of
12 Congress not later than April 30 and October 31 of each
13 year, together with a report by the Office of Inspector Gener-
14 al of the establishment containing any comments such Office
15 deems appropriate.

16 “(3) Within sixty days after the transmission of the
17 semiannual reports of each establishment head under this
18 subsection to the Congress, the head of each establishment
19 shall make copies of such report available to the public upon
20 request and at a reasonable cost.”.

21 (c) Section 5 of such Act is further amended by adding
22 at the end thereof the following new subsection:

23 “(g) As used in this section—

24 “(1) the term ‘ineligible cost’ means an incurred
25 cost that is questioned by the Office of Inspector Gen-

1 eral because of an alleged violation of a provision of a
2 law, regulation, contract, grant, cooperative agree-
3 ment, or other agreement or document governing the
4 expenditure of funds;

5 “(2) the term ‘unsupported cost’ means an in-
6 curred cost that is questioned by the Office of Inspec-
7 tor General because the Office found that, at the time
8 of the audit, such cost was not supported by adequate
9 documentation;

10 “(3) the term ‘disallowed cost’ means an ineligible
11 cost or unsupported cost that the management of an
12 establishment has concluded, in an audit determination,
13 should not be charged to the Federal Government;

14 “(4) the term ‘audit determination’ means the
15 evaluation by the management of an establishment of
16 the findings and recommendations included in an audit
17 report and the issuance of a written final decision by
18 management concerning its response, including correc-
19 tive actions concluded to be necessary, to such findings
20 and recommendations;

21 “(5) the term ‘audit resolution’ means the comple-
22 tion of all corrective actions that the management of
23 an establishment has concluded, in an audit determina-
24 tion, are necessary with respect to the findings and
25 recommendations included in an audit report, and, in

1 the event that the management of an establishment
2 concludes no corrective action is necessary, 'audit reso-
3 lution' occurs when an audit determination has been
4 reached; and

5 "(6) the term 'audit status' includes the following
6 four categories:

7 "(A) audits for which the audit report was
8 issued before the reporting period and for which—

9 "(i) the audit determination was made
10 before or during such period; and

11 "(ii) the audit determination was not
12 made by the end of such period; and

13 "(B) audits for which the audit report was
14 issued during the reporting period and for
15 which—

16 "(i) the audit determination was made
17 during such period; and

18 "(ii) the audit determination was not
19 made by the end of such period."

20 (d) Section 3512(b)(2) of title 31, United States Code, is
21 amended by adding at the end thereof the following: "Such
22 standards shall include (A) a definition of audit resolution
23 consistent with section 5(g)(5) of the Inspector General Act
24 of 1978, and (B) a standard to ensure that an audit determi-
25 nation will be made on each audit report within 6 months

1 after the issuance of such report, in the case of an audit per-
2 formed by a Federal auditor, and within 6 months after re-
3 ceipt by the executive agency responsible for the program
4 concerned, in the case of each audit performed by a non-
5 Federal auditor. No order, circular, or directive prescribed by
6 the Director of the Office of Management and Budget shall
7 include an inconsistent definition or standard with respect to
8 audit resolution."

9 OATH ADMINISTRATION AUTHORITY

10 SEC. 7. Section 6(a) of the Inspector General Act of
11 1978 is amended—

12 (1) by redesignating paragraphs (5) through (8) as
13 paragraphs (6) through (9), respectively, and

14 (2) by inserting after paragraph (4) the following
15 new paragraph:

16 "(5) to administer to or take from any person an
17 oath, affirmation, or affidavit, whenever necessary in
18 the performance of the functions assigned by this Act,
19 which oath, affirmation, or affidavit when administered
20 or taken by or before an investigator or such other em-
21 ployee of an Office of Inspector General designated by
22 the Inspector General shall have the same force and
23 effect as if administered or taken by or before an offi-
24 cer having a seal;"

1 APPROPRIATION ACCOUNTS

2 SEC. 8. Section 1105(a)(25) of title 31, United States
3 Code, is amended to read as follows:

4 "(25) a separate appropriation account for appro-
5 priations for each Office of Inspector General estab-
6 lished by the Inspector General Act of 1978."

Prepared Statement
of
Joseph R. Wright, Jr.
Deputy Director
Office of Management and Budget

Before The
Committee on Governmental Affairs

United States Senate
May 12, 1987

Good afternoon, Mr. Chairman and members of the Committee. It is a pleasure to appear before you today to discuss the provisions outlined in the "Inspector General Act Amendments of 1987," S. 908.

Introduction

The President has long been a strong advocate of Inspectors General (IG) and, through the President's Council on Integrity and Efficiency (PCIE), has assigned the IGs a key role in the detection and prevention of fraud and abuse in all Federal Programs. The PCIE has been extremely successful in these endeavors. For example, during fiscal year 1986, IG activities resulted in: (1) cost savings and avoidance of approximately \$20 billion, (1) over 4,000 successful civil and criminal

prosecutions and (3) debarment, or suspension of more than 2,000 government contractors and grantees. These achievements bring the PCIE totals for the period FY 1981-86 to: savings and cost avoidances of \$84 billion, successful prosecutions of over 18,000 and debarments or suspensions of more than 6,000. Given these PCIE accomplishments, I am pleased today to be testifying not only in my capacity as Deputy Director of the Office of Management and Budget, but also as Chairman of the PCIE. Congress, which created the Inspectors General under the 1978 Inspector General Act, can be proud of their spectacular achievements. I also appreciate the opportunity to inform the Committee of our general support for the bill. We do, however, have some important changes to recommend. Let me now turn to a discussion of specific provisions of the bill.

S. 908

The administration strongly supports the intent of this bill. As in the past, the Inspectors General and the Administration continue to support the technical amendments included in sections 2, 3, and 7 of the bill. These provisions would: (1) include the IGs at the Departments of Energy and Health and Human Services and the Railroad Retirement Board in the IG Act of 1978, (2) provide uniform salaries for all IGs, and (3) extend oath authority to all IGs. We believe that these

technical amendments will ensure uniformity of authorities and responsibilities among all IGs.

S. 908 would create new statutory Inspectors General at four agencies, the Federal Emergency Management Agency (FEMA), the Office of Personnel Management (OPM), the Nuclear Regulatory Commission (NRC), and the Department of Treasury. The Administration has no objection to establishing IGs at FEMA, OPM and NRC. Further, we understand that these agencies will or have provided comments directly to the Committee. We would suggest that the committee also consider an Inspector General at TVA. However, the Administration continues to oppose a statutory IG at the Departments of Justice and Treasury because of the unique missions of these agencies. While we appreciate that the Committee has excluded the Justice Department from this bill, we continue to believe that creation of a statutory IG at Treasury is unnecessary and could, we believe, impair that agency's ability to maintain the integrity of its monetary, tax, and various law enforcement responsibilities. Treasury's existing administrative IG has sufficient authority to conduct and supervise internal audits and investigations of the Departments programs and operations.

Section 5 of S. 908 would extend various requirements of the IG Act to internal audit units at Federal entities not now covered by the Act. If, after 180 days the legislation is

enacted, there is a Federal entity for which there is no internal audit unit the head of that Federal entity must report this fact to the Comptroller General and the Director of OMB, and must provide a summary of action taken by the agency to provide adequate audit coverage. This information must be provided annually thereafter for any entity not having an internal audit unit.

The Administration strongly supports the Committee's efforts to ensure the integrity and effectiveness of audit functions throughout the Federal Government. Moreover, I firmly believe that there is no excuse for any Federal agency not to have adequate audit coverage. Therefore, last week, I directed those agencies not having a statutory IG to report immediately to me on their compliance with the provisions of OMB Circular A-73, "Audits of Federal Programs and Operations." More specifically, these agencies were directed to provide a summary of how they are ensuring adequate audit coverage, and how they are protecting the independence and integrity of their audit function. For your information, I will provide a copy of this directive, dated May 8, 1987, for inclusion in the record.

If an agency report indicates that it is not in compliance with A-73 and the GAO Standards for Audit of Governmental Organizations, Programs, Activities and Functions (the so-called "Yellow-Book" Standards), that agency would be given only 30 days

to submit a plan for achieving compliance with OMB and GAO audit standards. We think the importance of this compliance warrants the short response time.

Because of staff size or budget restrictions, there may be a number of smaller Federal entities which will be unable to meet such standards. We propose that these agencies should be permitted to rely on existing Federal audit staffs in other agencies for help. We recommend that the bill include authority for OMB to direct that existing IGs perform audit work for these very small agencies. We would be pleased to work with the Committee on the parameters for such authority in lieu of the bill's audit provisions. We are also not sure how the small regulatory agencies should be handled and would be pleased to work with the Committee on this matter.

Section 6 of S. 908 would provide greater specificity as to some of the items to be included in the IGs semi-annual reports on audit activities. In particular, the IG would be required to include a list of every audit report issued and the amount of ineligible and unsupported costs in each, summaries of significant revised audit determinations, and a statistical analysis containing information on the status of each audit through the point of audit determination. In addition, the bill would require each agency head to submit a semi-annual report to the Congress, listing each audit report which was not resolved

within one year of audit determination, including the reasons why resolution was not accomplished. The agency head would also have to provide information on disallowances that are under appeal, and collection activities. Finally, Section 6 of the bill also includes various definitions including the terms "audit resolution" and "audit determination," and prohibits OMB from issuing any directive containing a contrary definition of these terms.

The Administration basically agrees with the efforts of the Committee to heighten the accountability of the IGs and the agency managers in the audit resolution process. Further, the majority of the members of the PCIE has no objection to the revised IG reporting requirements included in the bill. We would like the opportunity to work with the Committee on changes to the definitions and reporting requirements included in the bill.

The Administration also generally favors agency heads reporting on their audit follow-up activities, including implementation of corrective action. However, we recommend an alternative to the reporting requirement contained in S.909. Instead of having each agency head prepare semi-annual reports to the Congress concerning the status of collection activities, we propose that the bill be revised to require agencies to submit this information to OMB. OMB would, in turn, incorporate this

audit resolution information in our annual Management Report to Congress which could be legislated.

I believe there are several advantages to this approach. First, having the information pass through OMB would enable us to more closely monitor agency progress in audit resolution, by incorporating it in the agency management plans, and including it as part of both our budget and management reviews. Second, the agencies could be required to include in their reports information on implementation of Circular A-123 ("Internal Control Systems") requirements. This portion of agency reports would focus on material weaknesses in program administration, and would identify potential areas for future auditing. I believe that this more detailed report would assist OMB in managing executive agencies, and Congress in their oversight efforts.

Section 8 of S. 908 would require the President to include in his budget submission "a separate appropriation account" for each OIG. The Administration and a majority of IGs favor such a separate line item, because it would enhance each IG's independence and control over his or her resources. However, several IGs prefer not to have a separate line item because such an arrangement provides increased flexibility.

Finally, the bill includes specific provisions concerning (1) the Office of Investigations at the NRC and (2) the Chief

Postal Inspector of the United States Postal Service (USPS). With respect to these provisions, we defer to the NRC and the USPS, respectively.

Conclusion

I believe that the Administration has reason to be proud of the success of its statutory Inspectors General. Therefore, it is important to expand and strengthen the statutory IGs, and to enhance audit functions in the agencies not having statutory IGs. In this way, we can maximize the Government's efforts to reduce waste and abuse in Federal programs. I believe that we can work with the Committee to make S. 908 a bill that would significantly advance these efforts.

Mr. Chairman and members of the Committee, I appreciate the opportunity to be here this afternoon to discuss the Administration's views on S. 908.

I will be happy to answer any questions the Chairman or members of the Committee may have.

Mr. Wright's

Response To Additional Questions From Senator Roth

Question 1. Section 10 of OMB Circular A-73 provided for an independent policy review to ascertain its effectiveness three years after the date of its issue. The revised Circular A-73 was issued on June 20, 1983. Was such a policy review performed and what was found as a result of the review?

Answer: This Circular is monitored on an ongoing basis and changes are made as necessary. Currently, there are two changes being considered. One will revise the Circular to establish standards for investigations. The standards will help ensure that investigations are performed by qualified staff in an efficient and effective manner. The other change will incorporate the results of our current study to improve audit coverage in small agencies. The study is designed to develop a strategy to ensure that adequate audit and investigative coverage is in place in these agencies.

Question 2. The PCIE study's recommendation of "cognizant" IGS providing reimbursable audit and investigative support to the smallest of the small agencies is built upon the cross-servicing arrangements called for in OMB Circular A-73. Apart from requiring reimbursement for such services, are there any legal obstacles to implementation of the PCIE recommendation of cognizant IG's for the smaller agencies?

Answer: We are aware of no other legal obstacles in this area other than those identified by the witnesses.

Question 3. The PCIE recommended possible cognizant assignments of Inspectors General for the smallest agencies. If Congress were to adopt the PCIE recommendation of cognizant IGs for the smaller agencies, would OMB prefer that Congress legislate those assignments or that it delegate the authority to OMB to make those assignments?

Answer: Our preference would be for the Congress to delegate the authority for making these assignments to the Office of Management and Budget (OMB). This would give OMB administrative flexibility to make reassignments when needed to effectively and efficiently accomplish audits and investigative work in these agencies.

Question 4. Section 5 of S. 908 applies all of the authorities and responsibilities of sections 4 through 7 of the Inspector General Act on the non-IG agencies. Mr. Funk's testimony suggested that not all of the authorities and responsibilities in those sections of the IG Act be applied to the smaller agencies and suggested several examples, including the legislative and regulatory review requirement, the semi-annual reporting requirement, and the subpoena and appointment authorities. Do

you believe that Congress should not apply these authorities and responsibilities to the non-IG agencies? If so, which ones and why?

Answer: These agencies, would have difficulty supporting all of the activities of an Office of Inspector General. However, as a minimum the agencies should:

- o make legislative and regulatory reviews of items which have major impact on the agency's mission;
- o prepare annual reports on audit and investigative activities;
- o be provided subpoena authority. The Department of Justice would assist as necessary.

Question 5. How are allegations of misconduct against an IG or IG personnel handled; that is, who guards the guardians?

Answer: We established procedures for handling these allegations against an Inspector General (IG) on September 1, 1983 in a memorandum addressed to the heads of departments and agencies represented on the President's Council on Integrity and Efficiency. The Chairman of the President's Council on Integrity and Efficiency, the Deputy Director of OMB refers allegations

against IGs either to the Department of Justice, the Office of Government Ethics or the Office of Special Counsel. Allegations against an IG employee would be referred to his or her IG for investigation.

Question 6. In 1981, Congress granted certain law enforcement authorities for IG personnel at the Agriculture Department for purposes of facilitating investigations of program fraud, particularly in the Food Stamp and the School Lunch programs. Have there been any instances where the requirements of the Inspector General Act, particularly the reporting requirements, have required the Agriculture Department to disseminate any information which compromised an ongoing investigation?

Answer: The Department of Agriculture has advised us that there have been no cases where it has been required to disseminate information which compromised an ongoing investigation.

STATEMENT BY
SHERMAN M. FUNK, INSPECTOR GENERAL
U.S. DEPARTMENT OF COMMERCE
BEFORE THE
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
MAY 12, 1987

Mr. Chairman and members of the Committee:

I am here today to discuss the review of small agency audit and investigative capabilities conducted by the President's Council on Integrity and Efficiency, and to provide my views on sections 5 and 6 of S.908, "Inspector General Act Amendments of 1987." I should note that I am here wearing two hats: the first as Inspector General of the Department of Commerce. I have been nominated to be the IG of the State Department, but as yet have not been confirmed. My second hat today is as Chairman of the PCIE's Inspections and Special Reviews Committee.

The PCIE review was requested last year by Senator Roth who asked that the PCIE recommend the most appropriate and efficient methods of ensuring that adequate audits and investigations are carried out at the small agencies. Results of the review were to be used by the Governmental Affairs Committee in your consideration of S.2005, now superseded by S.908.

Our review was conducted by a team under my direction from the Commerce, Interior, HHS, and Defense Offices of Inspector General. One of the major benefits of the PCIE is that it furnishes a vehicle for such interagency IG activity, thereby enabling members of the Council to accomplish jointly what we cannot do individually. Mary Ellen Chervenik, of the Commerce OIG, was the audit manager of our study, and she is here with me.

By agreement with the committee, our review focused on the 63 agencies we identified which have no audit or investigative staff or have a staff of fewer than 10 professionals. We describe these agencies as "small." In the Federal Government, however, "small" is very much a relative term. Collectively, the 63 agencies in our study universe employ about 13,000 people and spend approximately \$1.5 billion each year. Even in today's budget, this is not walking around money.

Twenty-two of the 63 agencies already have audit units. We found here that:

- o Eleven of the 22 audit units are not organizationally independent, as required by GAO standards. Audit directors in general were perceived by agency staff to have little or no authority to select for audit those areas with high vulnerability to fraud, waste and abuse.

- o Most of the audit coverage in these 22 agencies is limited and sporadic. For example, the majority of audits performed did not address whether the results desired by Congress when it established the agencies were in fact being achieved, or whether the agencies could conduct their operations at a lower cost to the taxpayers. Also, GAO audit standards state that the needs of government may not be fully met unless audits which address these needs are performed over a period of time.
- o Only four of the 22 agencies have investigative staffs. What little internal investigative work we found in the other 18 agencies was usually handled by auditors, management (in coordination with counsel) or, in a few cases, through referrals to the Department of Justice. Within the scope of our review, we were unable to determine the quality of this investigative work or to make a realistic projection of investigative requirements.
- o The long-term status of audit/investigative units is uncertain, inasmuch as none were assured of permanent status through legislation. Agency heads therefore can now eliminate their audit/investigative units for any reason, at any time, with no justification.

Our review of the 41 agencies without an internal audit unit disclosed that the majority did not obtain adequate coverage from external sources, such as the GAO, CPA firms, or other federal agencies. As a result, there has been little independent assessment of the disposition of agency funds or the effectiveness of agency operations. The 41 agencies employ a total of 12 auditors; there are no investigators.

In summary, we believe that the audit and investigative activities at the small agencies we reviewed should be improved. However, any changes must be carefully weighed against the increased cost of providing the improved coverage. For this reason, PCIE considered a wide range of options before deciding upon the recommendations I am making here today. We also believe that our recommendations can and should apply to 10 small agencies not included in our study, either because of their size or because they previously had been looked at by the GAO. -

First, we recommend that a strengthened consolidated audit and investigative function be established in 31 agencies. These agencies represent those which have budget authority of more than \$100 million or which are regulatory in nature. Some of the regulatory agencies have budgets substantially less than the \$100 million threshold. However, in view of the sensitivity of their work, and the paramount need to assure the continuing integrity

- 3 -

of their staffs and operations, we believe that all of the regulatory agencies warrant inclusion in this recommendation, regardless of their size. The 31 agencies are identified in an attachment to my statement which I have submitted for the record.

The strengthening -- or, in a few cases, the establishment -- of the audit and investigative function should be accomplished through an amendment to the IG Act or other legislation, which should require that this function be organizationally independent. That is, the chief of the office would be appointed by the head of the agency, would report directly to that head, and could be removed only by that head upon notification to the Congress. The chief of the office would have complete decision-making authority for selecting areas of audit and investigative coverage. The chief also would be responsible for reporting expeditiously to the Attorney General whenever he or she has reasonable grounds to believe there has been a violation of federal law. The consolidated offices in these agencies should generally be afforded the authorities contained in sections 4, 5, 6, and 7 of the IG Act, as amended.

Reason would suggest, however, that full compliance with all of the sections of the IG Act by the 31 agencies may well impose on many of them an excessive administrative burden. For example, it may be difficult for a small unit to conduct the legislative and regulatory reviews required by Section 4, or to prepare the semiannual reports to the Congress required by section 5. It may even be difficult for some of the smaller units to adequately support the subpoena and, perhaps, the appointive authority provided in section 6.

Common sense arrangements could address these problems. Thus, the 31 agencies could report annually to the Congress rather than semiannually. Also, to the extent practical, they could be relieved of much of the workload of preparing operating manuals and other technical guidance documents by assistance from the statutory IGs coordinated through the PCIE.

Second, we recommend that a cognizant statutory inspector general be designated for each of the 42 agencies listed in the second attachment to my statement. The designated IGs would be responsible for providing reimbursable audit and investigative support to each agency for which they are assigned cognizance. We believe that this will be the most cost effective method of providing audit and investigative coverage of these 42 agencies.

Specifically:

- o The terms, conditions and operating procedures governing this reimbursable support would be established in a Memorandum of Understanding negotiated between the IGs and the heads of the

agencies for which they will have cognizance. The basic ground rules that would underlie each Memorandum of Understanding would reflect appropriate sections of the IG Act, criteria in applicable OMB circulars, GAO audit standards, and the quality standards issued by the PCIE.

- o Through amendment to the IG Act or other legislation, authorize the statutory IGs to: (A) provide audit and investigative support to agencies -- other than their present agencies -- for which they are assigned cognizance; (B) submit reports directly to the heads of the agencies for which they are cognizant, on work performed in those agencies; and (C) include summaries of cognizant agency work, and relevant statistics, in their semiannual reports to the Congress required by the IG Act.
- o Through amendment to the IG Act or other legislation, authorize the Office of Management and Budget to: (A) make cognizant assignments; (B) reassign auditors currently in agencies for which audit coverage will be provided by a cognizant IG to that IG; and (C) based upon requests from the agencies affected, seek additional funds as necessary for these agencies so that they can reimburse their cognizant IGs for audit and investigative work.
- o The IGs concerned should negotiate, as they have for their own agencies, a Memorandum of Understanding with the Federal Bureau of Investigation which addresses investigative coverage of the agencies for which the IGs will have cognizance. i.e., spells out which kinds of crimes will be investigated by the Bureau and which by the IGs.

Two alternative means of implementing cognizance are suggested:

- o One alternative would match an IG for cognizant assignments based upon reasonably related missions. This should not be as difficult as it may appear.
- Taking Commerce as an example, that department has, in NOAA's National Marine Fisheries Service, a function which closely relates to the Marine Mammal Commission. It has, in the Economic Development Administration, an agency which relates to the National Council on Public Works; in the National Bureau of Standards, an agency which relates to the National Institute of Building Sciences; and, in the National Telecommunications and Information Administration,

one which relates to the Board for International Broadcasting. The Commerce OIG already has auditors and investigators familiar with the work of all four Commerce agencies. Thus, again only as an example, the four small "counterpart" agencies noted could be assigned to the Commerce IG for cognizance, with no major learning curve required of that OIG staff. Other cognizant assignments among the statutory IGs could be made on a comparable basis.

- o A second alternative would restrict cognizant assignments only to those statutory IGs, excluding Defense, with the largest resources. The intent here would be to exploit the economies of scale available to these IGs. The IGs for HHS, USDA, HUD, and Labor have the largest resources among the civilian agencies.

We believe that the potential benefits to be achieved through these recommendations will substantially exceed the cost of implementation.

Based only on historical savings realized from internal audits, we estimate that roughly \$25 million of savings will result from an implementation cost of less than \$1 million. I emphasize that these are very conservative figures; they include no investigative recoveries, nor any savings from contract or grant audits, even though some of the agencies concerned (e.g., Appalachian Regional Commission, the two National Endowments) have substantial grant programs. The cost side is predicated upon a net increase of 20 auditors needed to implement our first recommendation affecting 31 agencies.

One caveat here: we do not project any FTE increase for investigators. Unlike audits, which not only lend themselves to advance planning but require it, investigative work is essentially reactive. Any projection of investigative FTE needs in the absence of operational experience would therefore be unreliable. Our feeling is that at least some of these 31 agencies which now lack a criminal investigative capability will require it, but we cannot at this time hang a number on the requirement. If our recommendation is implemented, we suggest that the heads of the internal audit units be tasked to track investigative needs for a year, at which time the issue should be revisited. Of course, eventual hiring of investigators will increase the cost side of our cost/benefit equation. This should not make an appreciable difference in the 25:1 ratio, however, because there will be a corresponding (or greater) increase in the benefits side resulting from investigative recoveries.

We do not believe that any new FTEs will be required to implement our second recommendation, affecting 42 agencies.

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There presently are 12 auditors in these agencies. Assuming that all 12 are transferred to the staffs of cognizant IGs, and assuming that audit coverage can be provided on a normal cyclic basis, there should be no reason for further augmentation. It is important to keep in mind that the total budget authority for all 42 agencies is less than \$40 million, and their total number of authorized FTEs is less than 3,000. If I were to ask Secretary Baldrige for 12 new FTEs to cover an audit universe that small, I would not get very far. If he were magnanimous, I would be stopped later by OMB or, if not there, certainly by my appropriations committees. The fact is that 12 audit staff years are enough to address this universe, particularly on a cyclic basis.

I want to emphasize also that, however favorable a 25:1 cost/benefit ratio may be, it grossly understates the advantages that will accrue from the provision of aggressive and independent internal audit coverage of the 73 agencies. Because we have to satisfy budget examiners, the IGs tend to frame our accomplishments in the form of common statistics....so many convictions, so many indictments, so many savings. But numbers, however impressive, neither address nor describe, except by implication, our more significant achievements -- flagging internal control weaknesses which make programs vulnerable to fraud, waste and abuse, helping to assure that programs are operated efficiently and with integrity, and helping to assure that the public gets the quality and volume of services they pay for. None of us is smart enough to quantify these benefits, but all of us know that they are what the IG Act is really all about.

I should add, too, that the concept of cross-servicing audit coverage is by no means new or unusual. It has long been an integral feature of OMB Circular A-73, one of the basic directives governing federal audits. For example, Richard Kusserow, the IG of HHS, audits about 96% of the grants to universities made by federal agencies. Indeed, I have been paying his shop a substantial amount for the past six years because Commerce has many of these grants. It is silly for me to duplicate the expertise his staff has developed in this area, and it is even sillier to burden the universities with a succession of audits from different grant-making agencies. And we have never had a problem -- provided, of course, that I include enough money in my budget to cover the HHS audits. The implementation of IG cognizance over smaller federal agencies would therefore build upon the A-73 concept of cross-servicing audit coverage.

Are there down sides to our recommendations? Of course. I can think of no recommendation affecting 73 agencies that will not have a down side. Sixteen of the 17 IGs who expressed an opinion agreed with our first recommendation, which is perhaps as close to unanimity as 17 IGs will ever get. However, five IGs disagreed, in some cases sharply, with our second recommendation regarding cognizant assignments.

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Many of their reasons for disagreement reflected a fear that they would be compelled to assume a workload which they have not measured, and which they must discharge with no additional resources. I believe that the reassignment of the 12 auditors mentioned earlier will alleviate some of this fear, as will the recognition that the audit universe involved is, in reality, quite small. Nevertheless, I do not wish to state or imply that assumption of added small agency responsibilities will be painless. Effective auditing entails much more than physical audits; extensive planning is required, as are follow-ups to the actual audits. Part of our job is to make sure that managers do what they say they will do, and this admittedly burns up resources.

Some expressed an entirely valid fear that so many oversight committees on the Hill will be involved that the cognizant assignment process could easily bog down if even a few committees objected. I frankly have no ready answer to this, except perhaps to note that a common sense proposal is its own best advocate -- particularly in the absence of any proposal that is equally practical.

Another concern was voiced regarding the inclusion of regulatory agencies in our first recommendation. The IG here suggested that, inasmuch as Congress has never clearly articulated whether these agencies reside in the Executive Branch or are constitutionally distinct, it would be the better part of wisdom for the PCIE simply to point out the problems we found in our review, and not propose any solution. An ancillary concern related to all of the small agencies: in effect, Congress created each of them as an independent entity, when it could just as well have incorporated them in a Cabinet department or larger independent agency. The IG asked whether our proposal might be interpreted as an effort, however unwitting, to undo what Congress had done earlier. My answer to the latter fear is that we would essentially be doing little more than institutionalizing on a large scale the kind of cross-servicing arrangements that are already being quietly handled on a small scale. With regard to the constitutional issue of the regulatory agencies, this is not something I am equipped to address. It seems to me, perhaps naively, that seeking the establishment of an adequate audit and investigative capability within a regulatory body does not threaten the independence of that body, but again, this is not my area of competence. Obviously, as in the case of Nuclear Regulatory Commission and S.908, the issue can be handled through legislation.

There were a number of procedural concerns voiced, but I believe that most of these have been resolved in our final report, which was extensively edited to address them.

Finally, several of my colleagues feel that the second recommendation may be interpreted as a power grab by the IGs, as an exercise in turf expansion that will trigger the query, "Why

are the Inspectors General so anxious to take over the small agencies?" I cannot deal with perceptions, but the cold reality is that all of us in the IG community are consumed with the problem of effectively discharging our current responsibilities within available resources, much less seeking new responsibilities in other agencies. In any case, taking on one or perhaps two additional auditors in exchange for a new workload cannot, to put it very mildly, be termed a "power grab."

I have been asked to comment, speaking for myself, on sections 5 and 6 of S.908. The intent both of section 5 and the PCIE study recommendations is to strengthen audit and investigative coverage at small agencies. However, the primary difference is that section 5 makes the establishment of an independent audit head voluntary, whereas the PCIE study recommends mandatory independent audit coverage for 31 agencies. Further, the bill's reporting requirement for agencies which do not have an audit staff makes no provision for follow-up on the part of GAO or OMB to assure that adequate audit coverage has in fact been provided.

The voluntary nature of S.908 and the lack of any follow-up requirement dilutes the effectiveness of the present bill. Indeed, because the bill gives substantial responsibilities to those agencies which do have an audit staff, it may very well be counter-productive in that it may encourage agencies to choose not to have an audit staff. For example, if audit reports are never issued, agencies obviously would not have to prepare reports to Congress on audit results. The bill imposes no penalties for agency failure to advise GAO and OMB of the lack of an internal audit staff. In fact, section 5 is very similar to OMB guidelines to federal agencies on audit coverage. Experience has shown that OMB's guidelines by themselves, without statutory support or other pressure, have failed to improve audit coverage. It is likely that Section 5, in its present form, would be similarly ineffective.

We believe that the PCIE-recommended actions would provide for better audit and investigative coverage at small agencies. First, the PCIE proposal would specify those smaller agencies that will have an independent audit function. Twenty-six of these agencies already have audit units; therefore, relatively little cost would be associated with establishing their independence through legislation.

Second, rather than requiring agencies, without an audit function, to report action being taken to provide for audit coverage, we propose that existing IGs provide this coverage to 42 agencies through cognizance assignments. We believe that this action will provide for more effective and efficient audit coverage through the economies of scale the IGs could offer, and also would provide a dependable means for employees of these agencies to report alleged waste, fraud or abuse in their programs and operations.

I support the thrust of section 6 of the bill. I believe that implementation of this section will improve the overall audit process by making more explicit the affirmative duty of federal managers to work toward audit resolution. This section is also helpful in clarifying the purpose of certain reporting requirements for the inspectors general.

In particular, I support the provisions in this section which provide for the reporting of audit determinations with which an inspector general disagrees, and I welcome the language which defines terms such as "ineligible and disallowed costs" and "audit status, determination and resolution." These arcane terms may seem to reflect technical differences only, but we should recognize that the recovery of millions of dollars of federal funds may ride on the way in which these differences are defined.

The definitions in section 6 will require some realignment of our operating procedures and tracking systems. Because of the investment many OIGs have in their current procedures and systems, I suspect that IG opinions about this will be divided. For myself, I believe the eventual benefits warrant the change.

Management's response to an IG's findings and recommendations is equally as important as the audit report in the audit resolution process. This section's provisions clarify management's responsibility to address a specific finding, and will go a long way to ensuring that the IG community receives management responses that are more finite and binding than many we receive now.

I will be happy to answer any questions the Committee may have.

ATTACHMENT I

31 AGENCIES RECOMMENDED
FOR
IN-HOUSE ESTABLISHMENT OF INDEPENDENT AUDIT HEAD

ACTION

AMTRAK

Appalachian Regional Commission
Board of Governors of the Federal Reserve System
Commodity Futures Trading Commission
Consumer Product Safety Commission
Corporation for Public Broadcasting
Equal Employment Opportunity Commission
Farm Credit Corporation
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Home Loan Bank Board
Federal Labor Relations Authority
Federal Maritime Commission
Federal Savings and Loan Insurance Corporation
Federal Trade Commission
Interstate Commerce Commission
Legal Services Corporation
National Archives and Records Administration
National Credit Union Administration
National Endowment for the Arts
National Endowment for the Humanities
National Labor Relations Board
National Science Foundation
Panama Canal Commission
Peace Corps
Securities and Exchange Commission
Smithsonian Institution
Tennessee Valley Authority
U.S. International Trade Commission

- * OMB has proposed the "sunset" of the Interstate Commerce Commission on October 1, 1987. The Department of Transportation has been requested to submit sunset legislation that would propose transfer of selected ICC functions and staff to DOT. Thus, it is possible that the DOT IG may assume ICC's audit functions, and provide audit and investigative oversight.

ATTACHMENT II

42 AGENCIES RECOMMENDED
FOR
DESIGNATION TO COGNIZANT INSPECTORS GENERAL

Administrative Conference of the United States
Advisory Commission on Intergovernmental Relations
Advisory Committee on Federal Pay
Advisory Council on Historic Preservation
African Development Foundation
American Battle Monuments Commission
Architectural and Transportation Barriers Compliance Board
Board for International Broadcasting
Christopher Columbus Quincentenary Commission
Commission of Fine Arts
Commission on Civil Rights
Commission on the Ukraine Famine
Committee for Purchase from the Blind and
Other Severely Handicapped
Delaware River Basin Commission
Export-Import Bank
Federal Mediation and Conciliation Service
Federal Mine Safety and Health Review Commission
Franklin D. Roosevelt Memorial Commission
Harry S. Truman Scholarship Foundation
Holocaust Memorial Council
Institute of Museum Services
Inter-American Foundation
Interstate Commission on Potomac River Basin
Japan-United States Friendship Commission
Marine Mammal Commission
Merit Systems Protection Board
National Capital Planning Commission
National Commission on Libraries and Information Science
National Council on Public Works Improvement
National Council on the Handicapped
National Institute of Building Sciences
National Mediation Board
National Transportation Safety Board
Neighborhood Reinvestment Corporation
Occupational Safety and Health Review Commission
Office of the Federal Inspector, Alaska Natural Gas
Transportation System
Pension Benefit Guaranty Corporation
Pennsylvania Avenue Development Corporation
Selective Service Commission
Susquehanna River Basin Commission
U.S. Arms Control and Disarmament Agency
U.S. Railway Association

FOLLOWUP QUESTIONS FROM SENATOR ROTH

1. Regarding the PCIE study's recommendation of "cognizant" IGs providing reimbursable audit and investigative support to the smallest of the small agencies, are there any other legal obstacles to implementation of the PCIE recommendation of cognizant IGs for the smaller agencies other than requiring reimbursement for such services?

ANSWER

There would appear to be only two additional legal obstacles.

- (1) OMB should have legislation authorizing it to make cognizant assignments. Although OMB arguably may have inherent power to do so, specific statutory sanction would preclude difficulties downstream.

It has been suggested that the kind of cognizant assignments envisioned in our recommendation are essentially similar to the cognizant assignments made by OMB for single audits. There is a substantial difference, however. In the single audit area, OMB is assigning cognizance by a federal IG over audit effort carried on by non-federal entities. Here, we are speaking of audit cognizance by a federal IG over another federal agency.

- (2) More important, the IGs will need statutory sanction to allow them to conduct audit and investigative work in other than their own agencies. The IG Act expressly grants certain authorities to statutory IGs in their agencies; the Act does not address their possession of these authorities in other agencies.

The issue applies to audits and investigations, but it is critical in the latter area. For example, I was asked last year by the Chairman of the Board of a small agency to investigate an allegation against a very senior official in that agency. Even though the Chairman provided me with a written authorization and request, I concluded that it would be inappropriate for me to do the requisite work. I feared that if the results of our investigation were referred to Justice, the fact that I had no legal sanction to work beyond the Commerce Department might quite possibly taint a potential prosecution. Also, in my own Department, all employees are required (by the IG Act and by departmental directive) to cooperate fully with the IG, at risk of dismissal if they fail to do so. This requirement does not apply to employees of another agency, nor do I have testimonial subpoena power to otherwise compel cooperation.

If IGs are to provide effective audit and investigative coverage of agencies other than their own, the IG Act must therefore be amended to explicitly give us the requisite authority.

2. Section 5 of S. 908 contains a definition of internal audit unit which states that such units do not include components that carry out audits or investigations as an integral part of the conduct of the programs and operations of the entity. Could you give us some examples of components at the 31 federal entities you identified which would fall within this definition and be excluded from the internal audit unit?

ANSWER

The Securities and Exchange Commission maintains a staff of skilled lawyers-investigators who handle the law enforcement aspects of the agency's mission. (The most visible recent activity in this area produced a wave of indictments for "insider trading.") Similarly, the EEOC has staff investigators who look into the validity of alleged violations of equal employment opportunity statutes and regulations, and the FTC has a staff which investigates alleged violations of certain unfair business practices.

The FDIC, FHLBB, and FSLIC have "regulatory auditors" who routinely review records of member banks to verify compliance with applicable regulations.

The above investigative and audit activities are "external" in nature, i.e., they focus on entities and individuals outside of the agencies rather than on the employees of these agencies. A more important distinction, however, is that they are an integral part of the programs of the agencies; without them, the missions of the agencies either could not be performed or would be badly hindered. The IG Act prohibits the OIGs from engaging in such "operational" activities.

There are several parallel examples in Commerce. NOAA's National Marine Fisheries Service has a staff of criminal investigators charged with enforcing various provisions of the Lacey and Magnuson Acts, and the International Trade Administration has a staff of special agents who enforce the export control laws. Also, ITA's import office has auditors who review the books of foreign firms to determine whether the latter are violating the anti-dumping laws. I did not conduct any of these activities in OIG, nor try to assume responsibility for them; I regarded them as inherent operational functions of the agencies concerned. I did, however, conduct audits and inspections of these units to determine how well they were handling their audits and investigations, and I recommended various ways in which their operations could be improved. I also investigated allegations of fraud against an ITA special agent, and allegations of mismanagement against one of the above units.

Thus, the S. 908 definition is correct in specifying "internal" audit unit.

3. Throughout section 5, reference is made to "internal" audit units. The comparable provision in last year's House bill did not contain the word "internal." Do you feel that inclusion or exclusion of the word "internal" is significant?

ANSWER

For the reasons noted above, inclusion of the word "internal" in section 5 of S. 908 is significant. In effect, it is a convenient shorthand way of differentiating between OIG-oriented oversight of waste, fraud and abuse and program/mission-oriented operational activity.

4. Please describe the terms of the cross-servicing agreements that currently exist to provide audit coverage to smaller agencies.

ANSWER

I am not aware of any formal cross-servicing agreements which now provide for full audit coverage of smaller agencies. However, as I noted in my testimony, OMB Circular A-73 calls for cross-servicing as a means of providing such coverage, and this is a well-accepted methodology in the federal audit community.

On an informal basis, the HHS OIG has audited the Selective Service Commission, the Interior OIG has audited the Holocaust Memorial Council, the Defense OIG has audited the American Battle Monuments Commission, and the GSA OIG has audited both the Commission on Civil Rights and the Arms Control and Disarmament Agency.

Several of the smaller agencies now have cross-servicing agreements with larger agencies for payroll and similar services. Although these are substantially different from agreements for full audit coverage, the differences are more in scope than in kind; essentially, the concept is the same.

Note also that the HHS IG audits about 96 percent of all federal grants to universities. This work includes, under cross-servicing agreements, university grants awarded by many other federal agencies. For example, during the past six years, I have been reimbursing the HHS IG for audits of Commerce grants to many universities, and the process has worked very smoothly.

GAO

United States General Accounting Office
Testimony

For Release
on Delivery
Expected at
2:30 p.m. EDT
Tuesday
May 12, 1987

The Inspector General Act Amendments of 1987

Statement of
John J. Adair, Associate Director
Accounting and Financial Management
Division

Before the
Committee on Governmental Affairs
United States Senate



Mr. Chairman and Members of the Committee:

We appreciate the opportunity to be here today to discuss S. 908, the Inspector General Act Amendments of 1987, and related issues. Specifically, we would like to (1) offer GAO's views on establishing statutory inspectors general (IGs) at four agencies, (2) discuss the results of our work regarding the internal audit and investigative operations of the Office of Personnel Management (OPM), (3) provide GAO's views on other provisions in S. 908, and (4) comment on the report of the President's Council on Integrity and Efficiency (PCIE) regarding the internal audit and investigative capabilities of small agencies.

COMMENTS ON S. 908

GAO strongly supported passage of the Inspector General Act of 1978 and other legislation that created statutory IGS. GAO reviews during the past several years indicate that the establishment of statutory IGs has been a key factor in correcting deficiencies and in strengthening federal internal audit and investigative activities throughout the federal government. Semiannual reports from the statutory IGs and the PCIE have shown that the IGs have had substantial success in helping to bring about improvements in the federal government.

S. 908 would, among other things, amend the Inspector General Act of 1978 by establishing offices of inspector general in the Department of the Treasury, the Federal Emergency Management Agency (FEMA), the Nuclear Regulatory Commission (NRC), and OPM.

Department of The Treasury

As I stated in my testimony before this Committee in February 1987, GAO strongly supports the establishment of a statutory IG at the Treasury Department.¹ In 1986, we issued a report to this Committee recommending that the Congress amend the Inspector General Act of 1978 to establish a statutory IG at the Treasury Department.²

Under S. 908, the new IG office would include the operations of the current nonstatutory IG plus those portions of the four Treasury law enforcement bureaus engaged in internal audit activities. Those portions of the law enforcement bureaus engaged in internal investigative activities would not be merged into the new IG office. We believe this type of organization would work well, provided that S. 908 keeps its current provisions giving the new IG office general oversight

¹Need for Statutory Inspectors General at Certain Federal Agencies (GAO/T-AFMD-87-2, February 19, 1987).

²Treasury Department: An Assessment of the Need for a Statutory Inspector General (GAO/AFMD-86-3, August 21, 1986).

responsibility over those internal investigative activities as well as the authority to conduct investigations in the law enforcement bureaus under certain circumstances.

Federal Emergency Management Agency

GAO also supports the establishment of a statutory IG at FEMA. FEMA has experienced problems in the areas of auditor independence as well as coverage of important FEMA programs and activities. We believe the establishment of a statutory IG in FEMA will help resolve these problems. The Office of Management and Budget (OMB) has also testified that it supports the establishment of a statutory IG at FEMA.

Nuclear Regulatory Commission

In addition, GAO supports the establishment of a statutory IG at NRC. We believe there is a strong need to enhance public trust in the regulation of nuclear power. Incidents such as the Chernobyl accident, and the revelations brought out in your hearings of April 9, 1987, Mr. Chairman, reinforce the need for independent oversight and reporting to the Congress on the regulation of nuclear power and oversight of other NRC activities.

We note that Section 4 of the bill would also prescribe certain authorities and responsibilities for the NRC Office of Investigations. This office would not be included as part of the IG office under the bill. While GAO has reviewed NRC's operations in some detail, including those that would be included in the statutory IG office, we have not performed an analysis of the Office of Investigations. Accordingly, we will refrain from commenting on those provisions in the bill relating to the Office of Investigations until we have had an opportunity to properly review its operations.

Office of Personnel Management

S. 908 would establish a statutory IG at OPM. We believe that this would strengthen the IG's independence and also improve congressional oversight. A statutory IG would be appointed by the President, with the advice and consent of the Senate. That official could be removed from office by the President, but the reasons for the removal would be communicated to the Congress. The IG would be required to report to the OPM Director or the deputy and would not be under the direction of program managers. Also, with a statutory IG, both the OPM Director and the Congress would be assured of, and aware of, independent assessments, through semiannual reporting, of federal programs and operations for which they are accountable or have oversight.

Further, because of the size of the retirement and disability trust fund, which had outlays of \$24 billion in fiscal year 1986, and because of the proliferation in the number of insurance carriers, including approximately 400 in fiscal year 1986, we believe a statutory IG is needed to ensure the highest level of audit and investigative coverage in OPM.

REVIEW OF OFFICE OF
PERSONNEL MANAGEMENT'S
AUDIT AND INVESTIGATIVE FUNCTIONS

Mr. Chairman, you requested in March 1987 that GAO provide assistance to this Committee in reviewing OPM's internal audit and investigative functions. While we have not performed a detailed review of OPM, we have reviewed the organizational makeup and mission of the existing internal audit and investigative operations, principally to determine what changes could be made to strengthen the effectiveness and independence of those functions and improve congressional oversight.

In addition to the current nonstatutory IG, there are several organizations in OPM which perform internal audit or audit-related functions. They include (1) the Insurance Audits Division, located within an OPM program office called the Retirement and Insurance Group, (2) the Program Integrity Section, also located within the Retirement and Insurance Group, and (3) the Analysis and Evaluation Division, located within what

OPM calls the Administration Group. I would like to briefly comment on each of these three groups and provide our opinion as to whether they should be included in a statutory IG office at OPM.

Insurance Audits Division

The Insurance Audits Division is responsible for audits of contractors providing health and life insurance to federal employees. The mission of the division is to determine that all carriers participating in the employee benefits programs are in compliance with contract terms and federal regulations and that they are operating effectively and efficiently.

S. 908 would merge the Insurance Audits Division into the IG office. In fact, the division was within the IG office from 1982 until 1986, when it was moved out of that office and into the Retirement and Insurance Group. The division was moved because the Director of OPM believed that it was critical for management to have the ability to "target audit resources" quickly to those areas and insurance carriers needing what OPM management believed was priority attention.

We support the provision in S. 908 to merge the Insurance Audits Division back into the IG office. We have two reasons for our position.

First, based on our understanding of the mission of the Insurance Audits Division, we believe that its function falls within the scope of internal audit activity. It is important to note that the division was previously a part of the IG office and that OPM's support for its placement outside of the IG office appears to be based primarily on OPM management having better control over "audit resources."

Second, placement of the Insurance Audits Division within the IG office would strengthen the independence of the OPM internal audit function. The IG currently reports to the Director of OPM, whereas the head of the Insurance Audits Division reports to the OPM associate director, who heads the Retirement and Insurance Group. The division is located organizationally under the same associate director who is ultimately responsible for negotiating and monitoring contracts with the insurance carriers who participate in the program. This official also has authority for final disposition of audit findings.

We believe independence is one of the most important determinants of the overall effectiveness of the audit function. Without independence, and the appearance of independence, much of the audit function's credibility can be lost. Generally accepted government auditing standards require that, for an internal audit function to be considered independent, it should report to the

head of the agency or the deputy. This position is consistent with the Inspector General Act of 1978 and its legislative history, which makes it clear that the audit function should report to the highest level within the agency to ensure independence.

Program Integrity Section

Under S. 908, another office in OPM, the Program Integrity Section, would also be merged into the IG office. Some of the work of the Program Integrity Section might be considered internal audit activity, insofar as identifying ineligible recipients of retirement payments might be considered to be within the internal audit realm of detecting fraud, waste, and abuse. However, their work may more appropriately be considered a typical programmatic control function in that it falls within the realm of management's internal control responsibilities. Further, the section carries out a programmatic function in that it is responsible for terminating benefits, calculating the amount of overpayments, and establishing repayment schedules.

Because of its programmatic functions, we believe it may be more appropriate to leave the Program Integrity Section outside of the IG office, provided that the IG has the authority and sufficient resources to evaluate significant fraud problems in

the retirement area and to determine underlying causes and systemic weaknesses in that area.

Analysis and Evaluation Division

The Analysis and Evaluation Division, currently located within what OPM calls its Administration Group, has experience in performing internal audits. This organization was, in fact, part of the IG office until 1982. In 1986, we reported to this Committee that the transfer of this organization resulted in the IG being unable to provide what we felt was adequate coverage of OPM programs.³

OPM officials advised us they are now considering moving this group back into the IG office. We support that move and suggest that S. 908 be revised to incorporate this organization into a statutory IG office at OPM.

OTHER PROVISIONS IN S. 908

I would like to provide GAO's views on some of the other provisions in S. 908. We support the provisions in section 5 strengthening the audit coverage in agencies not covered by the Inspector General Act of 1978. For example, we strongly support

³Internal Audit: Nonstatutory Audit and Investigative Groups Need to be Strengthened (GAO/AFMD-86-11, June 3, 1986).

the provisions strengthening the centralization and independence of the internal audit and investigative units in those agencies.

Section 5 would also provide that heads of federal entities without internal audit units periodically report to GAO and OMB on action being taken to ensure adequate audit coverage. We believe that the appropriate body for receiving such information is OMB rather than GAO. OMB policy guidance provides that all federal agencies have adequate audit coverage of their programs. The reporting provisions in section 5 would help OMB ensure that agencies are following its policy guidance on audits in Circular A-73.

In addition, section 5 contains a provision designed to strengthen the independence of the Chief Postal Inspector of the U.S. Postal Service. We agree with the intent of that provision.⁴

Section 6 includes provisions to promote the uniformity and the reliability of IG reports. We fully agree that the information reported to the Congress by the IGs should be uniform and consistent. To that end, we support the definitions

⁴U.S. Postal Service: Postal Inspection Service's Independence and Reporting Requirements (GAO/AFMD-87-24, April 16, 1987); The Organization and Operations of the Postal Inspection Service: Proposals to Strengthen Independence and Reporting Requirements (GAO/T-AFMD-87-11, April 30, 1987).

contained in section 6, particularly those pertaining to what constitutes "audit determination" and "audit resolution."

We also believe that the required detailed statistical analyses will provide more complete information on the status of audits in the audit resolution process. However, in our opinion, the statistical analyses should also include information on the number of audit report recommendations which were resolved. Audit resolution data would assist in understanding, monitoring, and evaluating the audit resolution process by showing if audit report recommendations are being resolved in a timely manner.

Also under section 6, federal agency heads would be required to report semiannually on those audit reports where recommendations were not resolved within 1 year after the date on which audit determinations were made. We believe this requirement will be useful in drawing needed attention to cases that may be taking too long to resolve.

We do have one major concern, however. Section 6 would result in GAO having to revise its Standards for Internal Controls in the Federal Government to ensure that audit determinations be made within 6 months. We believe that such a requirement should be provided directly by this legislation rather than by changing the standards. Standards, by their nature, are meant to be guiding principles rather than specific requirements of the type contained within the section 6

definitions. The existing standards are at least consistent with the section 6 definition of "audit resolution" and certainly do not preclude use of the section 6 definition of audit determination or a requirement that audit determinations be made within 6 months.

Section 8 would provide that a separate appropriation account be established for each statutory IG mandated by the Inspector General Act of 1978. We support the intent of section 8 to improve congressional oversight as well as strengthen the IGs' independence. We supported this position in a 1984 GAO report which examined the budgeting procedures for statutory IGs.⁵

REPORT OF THE PRESIDENT'S
COUNCIL ON INTEGRITY AND EFFICIENCY

At the request of this Committee, the PCIE has performed a study of the internal audit and investigative capabilities of smaller federal agencies. While we have not performed a thorough review of the PCIE's study, we would like to offer comments on the report.

⁵Impact of Administrative Budget Procedures on Independence of Offices of Inspector General (GAO/AFMD-84-78, September 26, 1984).

The PCIE has identified more than 70 small agencies having either no audit or investigative units or having less than 10 professionals in those units. Of those agencies with internal audit or investigative units, many are not independent and most do not provide adequate audit coverage of their agencies' programs. The PCIE identifies a range of options to strengthen the audit coverage at these small agencies and recommends this Committee adopt two of the options.

First, the PCIE recommends establishing and strengthening internal audit and investigative functions in those agencies which are regulatory in nature and/or have relatively large levels of personnel or budgets. Second, for each of the smaller agencies, the PCIE recommends designating a cognizant IG from among the existing statutory IGs. The cognizant IG would provide reimbursable audit and investigative support on the basis of a formal Memorandum of Understanding.

We believe all federal agencies should have internal audit coverage. Further, we believe that within each agency, audit and investigative functions should be centralized, that they should be independent, and that they should provide adequate audit coverage of their agencies' programs and operations.

We agree, at least in principle, with the PCIE's first recommendation to establish and strengthen internal audit and

investigative functions. This is consistent with our position that all federal agencies should have internal audit coverage.

We believe that the PCIE's second recommendation, regarding designating cognizant IGs, also has merit in that it presents a potentially successful means for providing adequate and effective audit coverage for remaining federal agencies. The recommendation is designed to ensure audit coverage and may go a little further than S. 908 in actually getting the proper audit coverage for the small federal agencies.

Before endorsing the PCIE recommendations, however, we think it is important to fully understand how the PCIE would ensure that its recommendations would be successfully implemented. For example, it is possible that cognizant IGs may not have sufficient incentive or resources to provide adequate coverage of the smaller agencies.

This concludes my statement, Mr. Chairman. We will be pleased to respond to any questions you may have.

STATEMENT

OF

STEPHEN J. MARKMAN
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL POLICY

BEFORE

THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

CONCERNING

INSPECTOR GENERAL AMENDMENTS OF 1987 - S. 908

ON

MAY 12, 1987

Mr. Chairman and Members of the Committee:

I am pleased to appear before the Committee today in connection with these hearings on S. 908, the "Inspector General Act Amendments of 1987." Among other things, S. 908 would establish statutory Inspectors General in the Department of Treasury, the Nuclear Regulatory Commission, the Federal Emergency Management Agency, and the Office of Personnel Management. The bill would not apply to the Department of Justice.

I have been invited to explain the reasons for our opposition to proposals to establish an Inspector General in the Department and to discuss the status and structure of the very effective existing internal audit and investigative units in the Department of Justice, which presently deal with financial, professional, and criminal misconduct.

I. Background

When the Inspector General Act of 1978 was enacted, Congress intentionally did not provide for the establishment of an Inspector General in the Justice Department, because, in the words of this Committee, it would be "undesirable to superimpose an Inspector General, who is basically a law enforcement official, on law enforcement agencies." ^{1/} The Department is, of course, almost entirely a law enforcement, not a financial or grantmaking, agency. Its budget does not approach the magnitude of most agencies with Inspectors General; the matters that Inspectors General focus on with success in other agencies

^{1/} S. Rep. No. 1071, 95th Cong., 2d Sess. at 14 (1978).

- 2 -

-- such as the operations of spending, income-transfer, and grantmaking programs -- either do not exist at, or are incidental to the primary mission of, the Department of Justice.

As the Committee is aware, representatives of the Department, beginning under the Carter Administration, have appeared before committees of Congress on several occasions to discuss our serious reservations concerning, and opposition to, bills that would extend the Inspector General Act to the Department. Our review of such past proposals and the recent report by the General Accounting Office (GAO) that advocates establishing an Inspector General at the Department ^{2/} leads us again to the conclusion that the drawbacks of establishing an Inspector General in the Department would far outweigh any advantages. In any event, such a proposal would be unwarranted in light of the effective mechanisms already in place in the Department to deal with financial, professional, and criminal misconduct.

II. Interference with the Authority of the Attorney General

The establishment of a statutory Inspector General at the Justice Department would uniquely and seriously undermine the Attorney General's authority and powers as the Nation's chief law enforcement officer in at least three ways: (1) it would impose an Inspector General on the law enforcement authority of the Attorney General; (2) it would allow the Inspector General to interfere with or jeopardize ongoing external investigations and

^{2/} GAO, Justice Department: An Assessment of the Need For a Statutory Inspector General (1986).

- 3 -

prosecutions; and (3) it may require or permit the Inspector General to disclose sensitive or confidential information.

A. Imposing an Inspector General on
the Attorney General's Authority

Extension of the Inspector General Act to the Justice Department would unwisely impose an Inspector General on the Attorney General's authority. The Attorney General is the Nation's chief law enforcement official, and the Office of Attorney General is, after the President, the final and ultimate repository of federal prosecutorial power. As the Supreme Court has characterized it, the Attorney General "is the hand of the President in taking care that the laws of the United States in protection of the United States in legal proceedings and in the prosecution of offences, be faithfully executed." 3/

The Attorney General's powers of investigation, indictment, and prosecution are far broader than those of any Inspector General. To fulfill these responsibilities, broad-based discretion must be entrusted to the Attorney General; clear authority and accountability are imperative in the enforcement of federal law. The Attorney General, accordingly, is fully responsible under current law to see that the Department's activities are conducted within the confines of the Constitution and the law, with adherence to the highest professional standards.

Extending the Inspector General Act to the Department would diffuse these responsibilities and lessen accountability.

3/ Ponzi v. Fessenden, 258 U.S. 254, 262 (1922).

For example, under the Act, the Inspector General would provide "policy direction for and . . . conduct, supervise, and coordinate investigations relating to the programs and operations" 4/ of the Department. The Inspector General would have authority to make whatever investigations he or she might deem appropriate, and the Attorney General would be without authority to halt or redirect those investigations. 5/

Heads of other agencies where statutory Inspectors General already exist, of course, face similar intrusions on their authority. But the authority of those agency heads to investigate possible wrongdoings is not as central to their agencies' missions as it is to the Attorney General, who, as stated above, is the Nation's chief law enforcement officer.

The GAO report (at 24-25) disputes the claim of diffusion of responsibility, maintaining that because Inspectors General have no agency program responsibility (and, in fact, have principally an advisory role), an Inspector General could not usurp the Attorney General's duties. 6/

As the Nation's chief law enforcement officer, however, the Attorney General has investigative and prosecutorial responsibilities with respect to all federal laws, 7/ including those that apply to the Department's "programs and operations." Thus, lodging principal investigative authority in a Justice

4/ 5 U.S.C. App. II, § 4(a)(1).

5/ Id. §§ 3(a), 6(a)(2).

6/ See also H.R. Rep. No. 828, 99th Cong., 2d Sess. 8 (1986).

7/ See, e.g., 28 U.S.C. §§ 509, 515-519.

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Department Inspector General with respect to the Department's programs and operations would directly conflict with investigative responsibilities committed to the Attorney General under present law. Although the Inspector General would be required to refer matters involving possible criminal activity to the Attorney General for prosecution,^{8/} because investigative authority is intertwined with prosecutorial and litigation powers, establishment of an Inspector General could indirectly infringe the Attorney General's prosecutorial and litigation powers.

For example, if the Attorney General determined that prosecutions should be directed against certain types of waste, fraud, abuse, and misconduct within the Department, he might not be able effectively to carry out such an initiative if the audit and investigative units came under the Inspector General's jurisdiction. In that circumstance, the Attorney General would be deprived of the ultimate authority to order the audit and investigative units to direct or redirect their efforts towards the areas of concern he had identified. It would be ironic indeed if the Attorney General, who is charged with seeing that the law is obeyed throughout the Nation, were divested of the principal responsibility and ability to see that the law was obeyed within his own Department.

In sum, to deny the Attorney General full and unfettered power to determine the limits of such investigations, prosecutions and litigation would preclude the exercise of the

^{8/} 5 U.S.C. App. II, § 4(d).

historical responsibilities of the office and cloud accountability for Department activities. We think the Committee was correct in 1978 when it concluded that it was "undesirable to impose an Inspector General, who is basically a law enforcement official, on law enforcement agencies," 2/ and established them instead at agencies where grantmaking or spending played a more central role.

B. Interference with Ongoing External Investigations and Prosecutions

An Inspector General could create review processes of prosecutorial decisions separate from existing procedures. Such additional review procedures would be unnecessary and could diminish the flexibility essential to the exercise of prosecutorial discretion. United States Attorneys must handle myriad of complex investigations and prosecutions in a criminal justice system that is taxed at all levels and, to do so, must be given a large degree of discretion in their decisionmaking within the confines of constitutional and statutory limitations and Department policy. Subjecting their decisions to Inspector General review would undermine that discretion and their ability to take prompt and decisive prosecutorial action.

Past Inspector General bills would have addressed this concern by leaving the Office of Professional Responsibility (OPR) in place as an office separate from the Inspector General. For example, the House Report on last session's H.R. 3077

2/ S. Rep. No. 1071, 95th Cong., 2d Sess. at 14 (1978).

maintained that because OPR would continue to exist under the bill, OPR, and not the Inspector General, would have the primary -- but not exclusive -- responsibility for the review of prosecutorial discretion. It noted that "[a]ny effort by the Inspector General to routinely review the exercise of legal judgment in individual cases would divert resources which should be used to promote more effective management, and the Committee does not intend or expect this to happen." ^{10/} Notwithstanding the continued existence of OPR under that bill and this expressed intent, however, there was nothing on the face of the bill that would affirmatively preclude an Inspector General from reviewing prosecutorial decisions as the Inspector General saw fit.

The GAO report, although not suggesting specific statutory language, also acknowledged the Department's concern on this point. It concluded (Report at 26):

We believe that reviews of prosecutorial discretion are an appropriate role for Justice's OPR and should be exercised for the Attorney General primarily by that office. However, we do not believe that the Inspector General should be precluded from conducting reviews of this nature if a unique set of circumstances warrants further review.

Thus, while the GAO report conceded that separate review by the Inspector General of prosecutorial decisions is inappropriate, it would leave that power in the Inspector General to exercise when "warrant[ed]." The Inspector General would have the sole discretion, apparently with no statutory standards for

^{10/} H.R. Rep. No. 828, 99th Cong., 2d Sess. 9 (1986) (quoting H.R. Rep. No. 211, 97th Cong., 1st Sess. 11 (1981)).

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guidance, to exercise that power, leaving open the possibility of unjustified intrusions into prosecutorial and litigation decisions.

The GAO report (at 25-26) also maintained that it would be appropriate for the Inspector General to review "cases to determine whether they were conducted effectively[;] . . . in accordance with established policy[;] . . . within the time frames established by law or policy[;] or whether the required approvals were obtained." It will surely be difficult in practice to distinguish between that type of review and the "routine[] review [of] the exercise of legal judgment in individual cases" that the House Report maintained was unintended and not expected. ^{11/} Moreover, because procurement and other spending matters constitute such a small portion of the Department's activities, we think that the temptation for a Justice Department Inspector General to branch out and investigate and review prosecutorial discretion may well be irresistible.

It should also be noted that keeping OPR in existence tends to defeat a major rationale of Inspectors General -- centralization of all audit and investigative authority in one official or office. If, in accordance with some past bill proposals and the GAO report, OPR continued as an independent

^{11/} H.R. Rep. No. 828, supra, at 9.

office, any justification for a separate Inspector General would be greatly diminished. ^{12/}

Additionally, the language of the Inspector General Act authorizing the Inspector General to "provide policy direction for, and to conduct, supervise, and coordinate . . . investigations" arguably may be broad enough to allow an Inspector General to inject himself or herself into the process of approving, renewing, and reviewing undercover operations. The GAO Report (at 28) recognized the concern, and suggested that Congress refer to "internal investigations" instead of "investigations," to avoid the Inspector General's involvement in such sensitive, external investigations. The House Report on H.R. 3077, however, neither acknowledged this concern nor adopted the suggested language change. This leaves open the possibility that, under legislation modeled on H.R. 3077, the Inspector General could well intrude in, and potentially disrupt, ongoing undercover operations, and the Attorney General would be powerless to stop any such intrusion.

Finally, the prohibition in the Act on interference with investigations could directly conflict with Department review procedures. For example, an Inspector General could subpoena a member of the press without the Attorney General's approval, notwithstanding the Department's policy -- designed to

^{12/} See Hearing Before the Senate Comm. on Governmental Affairs Concerning Inspectors General Legislation, 97th Cong., 2d Sess. 47-48 (1982) (statement of Senator Eagleton).

prevent interference with First Amendment values -- that requires express prior authorization by the Attorney General. Similarly, the Inspector General could engage in television surveillance or intercept and record oral conversations (with one participant's consent) without complying with Department approval requirements that protect privacy interests. Further, an Inspector General could, without prior authorization, reopen an undercover investigation that had been terminated by the Attorney General or the FBI Director who determined that the investigation inappropriately interfered with privacy interests or offered unjustified inducements to engage in criminal activity.

C. Disclosure of Confidential Information

The Inspector General Act requires submission to Congress of a semiannual report summarizing the activities of each Inspector General. Sixty days thereafter the report is to be made public. While the Act precludes public disclosure of information from "an ongoing criminal investigation," the Act does not expressly protect against disclosure to Congress; indeed, section 5(e)(3) of the Act states that "[n]othing in this . . . Act shall be construed to authorize or permit the withholding of information for the Congress or any committee or subcommittee thereof." Of course, the only way to protect sensitive information from disclosure is to limit those with access to it and ensure that the agency holding the information has control over its use and dissemination. If such information were contained in Inspector General reports to Congress, the risk

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of compromise would be greatly increased because submission to Congress, of itself, would increase the number of people with access to the reports.

More importantly, forbidding the Attorney General from deleting such information from an Inspector General's report would give rise to a serious separation of powers violation. Inspectors General are officers of the executive, not the legislative branch. Article II of the Constitution vests all executive power in the President, who has general administrative control over those executing the law, including the supervision and control over all replies and comments from the executive branch to Congress. ^{13/} There may be circumstances where other provisions of law -- other statutes, court orders, or constitutional provisions -- conflict with the reporting requirements. Denying the President through the Attorney General the right to screen the replies and to resolve such conflicts, i.e., to "take Care that the Laws be faithfully executed," would plainly violate Article II.

Further, even the protection against dissemination to the general public is not complete, inasmuch as "information with respect to a part of an ongoing criminal investigation" may be disclosed "if such information has been included in a public record." Sometimes, however, such "public records" may not be particularly accessible and the bits and pieces of information

^{13/} See 1 O.L.C. 16, 17 (1977).

that an Inspector General report might compile and disclose may be spread across many such public records. The compilation of such public information and its disclosure by the Inspector General could damage the Department's law enforcement efforts.

Thus, we believe that the disadvantages of establishing an Inspector General would greatly outweigh any advantages. Moreover, the creation of an Inspector General would be unwarranted because, as I will now explain, the Department has established comprehensive, coordinated, independent, and effective mechanisms to deal with financial, professional and criminal misconduct.

III. Existing Mechanisms To Deal with Financial, Professional and Criminal Misconduct

The Department has established audit units and internal investigative units both at the Department and bureau levels. The audit units generally handle financial and compliance audits; the internal investigative units generally deal with and investigate employee misconduct allegations.

The GAO report criticized the Department's existing audit and investigative mechanisms, focusing on alleged conceptual deficiencies with the Department's current auditing and investigative structure that GAO believed could be remedied by an Inspector General. Specifically, the report alleged that the Department's audit and investigative units were not sufficiently independent of the Department's program-administering personnel, and that a purported lack of

centralization adversely affected coordination and followup in those functions.

Significantly, however, the study did not purport to assess the adequacy of the work of the current auditing and investigative units in actual practice, ^{14/} and thus could not analyze specifically how a statutory Inspector General would improve the adequacy of that work. We think that it would be a serious mistake radically to reorganize the audit and investigative units of the Department when no current inadequacy or potential improvement in their work has been specifically identified. In any event, as I will describe, the Department's auditing and investigative units are, in fact, independent components, with effective coordination and followup histories.

A. The Present Structure

1. Audit Units

Nine audit units currently operate within the Department of Justice. The Audit Staff, within the Justice Management Division (JMD), has Department-wide jurisdiction. The other eight units operate within the Department's five operational bureaus -- the Federal Bureau of Investigation (FBI), the Immigration and Naturalization Service (INS), the Drug Enforcement Administration (DEA), the United States Marshals Service (USMS), and the Bureau of Prisons (BOP). Those eight

^{14/} Id. at 11.

bureau-level audit units are (1) the FBI's Audit Group in the Office of Program Evaluation and Audit, (2) the INS's Office of Field Inspection and Audit, (3) the INS's Policy and Procedure Section, Office of Comptroller, (4) DEA's Audit Section in the Office of Inspections of the Planning and Inspection Division, (5) DEA's Inspection Section in the Office of Inspections of the Planning and Inspection Division, (6) an audit staff within the USMS's Office of Internal Inspections, (7) BOP's regional audit staffs, and (8) BOP's Financial Audit Staff in the Office of Financial Management,

The eight bureau-level audit units are subject to the general oversight of the JMD Audit Staff, but generally report to officials within their bureaus. In addition, the audit units are required to report to the Office of Professional Responsibility for review and evaluation any matters in which waste, fraud, or abuse is suspected. ^{15/}

The Audit Staff in JMD formulates Department-wide audit policies, standards, and procedures and oversees the eight bureau-level audit units. The Audit Staff also conducts and coordinates audits of organizations performing under Department contracts, grants, or other agreements. The Audit Staff conducts expanded scope auditing consistent with Comptroller General standards, which encompasses financial and compliance, economy and efficiency, and program results audits.

^{15/} DOJ Order 2900.5A ¶ 8.d.

The Audit Staff has "complete freedom and authority to select and schedule organizations, programs, and functions . . . for internal audit and to establish the scope of the audit." ^{16/} Its reports are addressed to the bureau or division directors who have responsibility for the areas reviewed.

Ordinarily the Audit Staff reports to the Assistant Attorney General for Administration in charge of JMD, who, in turn, reports to the Deputy Attorney General. However, with respect to audits of the programs and activities of JMD, the Audit Staff reports directly to the Attorney General and Deputy Attorney General. In addition, any audit reports with significant findings are sent to the Deputy Attorney General, the Associate Attorney General, and the Office of Professional Responsibility.

2. Internal Investigations Units

Six internal investigation units have been established within the Department. The Office of Professional Responsibility (OPR) has Department-wide responsibilities; the other five units operate at the bureau level, with oversight by OPR. Those five units are (1) BOP's Office of Inspections, (2) DEA's Office of Professional Responsibility, (3) the FBI's Office of Professional Responsibility, (4) the INS's Office of Professional Responsibility, and (5) investigators within the USMS's Office of Internal Inspection.

^{16/} DOJ Order 2900.1C ¶ 5.6.

The bureau-level internal investigations units operate under a dual reporting system: all misconduct matters are reported both to officials within the pertinent bureau and to OPR. In addition, the bureau-level units send the Office a summary of significant items each month for its information and action.

The Counsel for Professional Responsibility, who heads OPR, reports directly to the Attorney General. OPR manages all investigations of allegations of criminal or non-criminal misconduct by Department employees, including potential abuses of prosecutorial discretion. Even investigation, litigation, and prosecution decisions, usually reviewed by supervisors up the line, are appropriately examined by OPR where there are allegations of abuse or misconduct. The Office oversees and, where appropriate, directs the bureau-level internal investigation units, which, as noted above, provide the Office with monthly status reports.

OPR supervises internal investigations of the United States Attorneys offices and the Department's litigating divisions and other components. It almost always itself conducts the actual investigation of allegations against senior Department officials, U.S. Attorneys, and U.S. Marshals, and allegations of an unusual or sensitive nature. The Office also generally conducts investigations concerning Assistant U.S. Attorneys and Department lawyers.

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OPR has overall responsibility for directing efforts against fraud, waste, and abuse in the Department. The audit units (including the Audit Staff) and internal investigation units are to report instances of suspected fraud, waste, or abuse to the Office. ^{17/} Moreover, any employee may report directly to OPR allegations of misconduct by Department employees. OPR is also charged with protecting the identities and job security of genuine "whistle blowers" in the Department.

OPR has complete freedom to determine the scope, depth, direction, and duration of its investigations. Access is available to OPR not only to the Department's most sensitive files -- investigative, criminal, and intelligence -- but also to grand jury testimony and records. The Office may refer cases it investigates, particularly when criminal misconduct may be involved, to the FBI or the Criminal Division. In addition, the Office may itself convene grand juries and prosecute such criminal misconduct. Thus, the power and authority of the Office in many respects exceed that of statutory Inspectors General. For example, statutory Inspectors General have no authority to examine grand jury materials, convene or compel testimony by grand jury, or prosecute criminal offenses.

In sum, OPR serves as the one place in the Department where all substantive reports concerning misconduct matters can and should be directed, where binding determinations whether an

^{17/} See DOJ Order 2900.5A.

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investigation should be criminal or administrative are made, where liaison with the Criminal Division or another investigative entity can be effected, and where any internal inspection unit, audit unit, or employee may come for direct, timely, and unfettered access to the Attorney General on matters appropriate for his review.

B. Independence and Impartiality

1. OPR and the Audit Staff

As suggested in the preceding descriptions, safeguards protect the independence and impartiality of the audit and investigative units. First, OPR and the JMD Audit Staff are completely independent of the other Department units that they investigate or audit. When the Audit Staff audits JMD components, it reports directly to the Attorney General or the Deputy Attorney General, preserving the Staff's independence and impartiality.

The GAO report (at 18) concedes that OPR is independent, but contends that the Audit Staff's independence in audits of JMD is "questionable" because the Audit Staff is otherwise supervised and evaluated by JMD. We think this objection is invalid, and certainly does not justify establishment of a statutory Inspector General. In our view, the Audit Staff's direct reporting of audits of JMD to the Attorney General or Deputy Attorney General in fact provides important and sufficient protection of its impartiality and independence. But even if the Audit Staff's placement within JMD were still deemed

an undesirable impairment on its independence, that problem could be resolved by simply removing the Audit Staff from JMD, without establishing a statutory Inspector General. Any further enhancement of independence by establishing an Inspector General would, for the reasons I have already described, be far outweighed by the drawbacks of the proposal.

2. The Bureau-level Units

The bureau-level audit units are subject to oversight by JMD's Audit Staff, which is unquestionably independent of the bureaus. Whenever those units suspect fraud, waste, or abuse, they are to report directly to OPR, which is also independent of the bureaus. Similarly, the bureau-level internal investigation units are in regular contact with OPR, reporting all misconduct, fraud, waste, and abuse matters, and sending OPR monthly reports on their activities.

The GAO report charges that the Department's bureau-level audit and investigative units lack sufficient independence because they are organizationally part of the bureaus they review. GAO also alleges that bureau-level audit reports, and those bureau-level investigative reports that are not referred directly to OPR, must sometimes pass through as many as six officials before reaching the Attorney General.

To the contrary, however, we think that the location of audit and investigative units in the bureau organizations (subject to Department-wide oversight) strengthens the accountability and efficiency of the directors of the independent

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bureaus. Any diminution in independence caused by the reporting of bureau-level audit and investigative units to bureau officials is offset by the oversight they receive from OPR and the Audit Staff. Further, all significant reports of financial, professional, or criminal misconduct, or of fraud, waste, or abuse, are referred directly to OPR, which has direct access to the Attorney General, bypassing intermediate bureau and Department officials.

The CAO report (at 17-19) also notes that, in some bureaus, program-conducting officials are rotated to investigative units, and then back to program-conducting roles, which, the report suggests, may impair the independence of those investigative units. However, the rotation of program personnel through investigative units in some bureaus may be justified by the increased insight it provides those individuals of the agency's structure. In any event, even if the rotation of program personnel through investigative units in certain bureaus were deemed an undesirable impairment on investigative independence, the rotation procedure could be modified or eliminated, without the installation of an Inspector General.

C. Coordination and Followup

The Audit Staff, under the direction of the Assistant Attorney General for Administration, has responsibility for formulating Department-wide audit policies, standards and procedures, and has complete freedom in selecting organizations, programs and functions to audit and the scope of the audits. It

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is difficult to conceive of a broader mandate to control and coordinate audits within the Department.

The GAO report (at 20) faults the Department's audit coordination because the eight bureau-level audit units do not routinely coordinate their work with each other, and because, it alleges, the Audit Staff's overall coordinating role is limited to conducting Department-wide surveys of target audit areas and considering the work of the bureau-level groups while preparing its own annual work plan. The report also observes that individual audit reports are not exchanged among the audit units.

Inasmuch as the Audit Staff has overall oversight and coordination authority over the work of the bureau-level audits, however, it is unnecessary for the bureau-level units regularly and separately to coordinate with each other. For example, if the Audit Staff determines that two bureaus are auditing the same program, the Staff can coordinate those audits to avoid duplication and ensure adequate coverage. The Staff may also arrange and direct exchanges of audit reports if it determines that to be useful.

OPR has a similar coordinating role with respect to investigative units. Yet the GAO report (at 19) suggests that OPR's coordinating role is inadequate because, although OPR receives monthly reports from the bureau-level internal investigation units, it only becomes involved with their work in cases of potential significant criminality or "questionable investigative practices." OPR, however, can take jurisdiction

over any matter involving employee misconduct, fraud, waste, or abuse. It is difficult to discern any flaw in OPR's coordination role when it monitors the work of the bureau-level units and involves itself in those matters it deems appropriate.

Moreover, OPR's broad mandate rebuts the contention that the Department does not have a single official or office responsible for coordinating both auditing and investigative functions. OPR has overall responsibility for directing efforts by investigative and auditing units against fraud, waste, and abuse; any such suspected activity or employee misconduct is to be reported by the units to OPR. The GAO report offers no reason why this level of audit-investigation coordination is insufficient or why further centralization of coordination is necessary or desirable.

Each audit unit has established followup systems to assure the implementation of audit recommendations. 18/ The GAO report (at 20) acknowledges the existence of the audit followup systems, but criticizes the Department for lacking a central official to monitor followup Department-wide. No reason is given, however, why followup should be more centralized and no specific deficiencies in the work of the audit units have been identified that would be corrected by such centralization.

18/ GAO Report at 20; see letter from W. Lawrence Wallace (JMD) to William J. Anderson (GAO) at 3 (October 16, 1985).

1V. Conclusion

As I have explained, the Department has established effective mechanisms to deal with financial, professional, and criminal misconduct within the Department. It would be a serious mistake to replace these comprehensive mechanisms with an Inspector General, particularly when the adequacy of the work of the audit and internal investigative units has not been questioned and when the matters that Inspectors General typically focus on -- the operations of spending and grantmaking programs -- are ancillary to the Department's primary mission of law enforcement. Moreover, the severe drawbacks associated with extending the Inspector General Act to cover the Department -- imposition of an Inspector General on the Attorney General's historical responsibilities, potential interference with external investigations, and possible disclosure of sensitive information -- strongly militate against taking such a radical step.

QUESTIONS SUBMITTED BY SENATOR GLENN
TO JUSTICE DEPARTMENT

1. Q. At the hearing, Mr. Shaheen testified that OPR itself has the authority to initiate or conduct an audit of Justice Department and bureau activities. What document(s) set forth OPR's authority to initiate or conduct any audit? Please provide a copy of the document(s), highlighting the relevant language.
 - A. Department Order 2900.5A, which implements in part 28 C.F.R. §0.39a (a), assigns to OPR the responsibility to receive and review all allegations involving claims of waste, fraud and abuse. Paragraph 8(b) of that Order assigns to OPR the responsibility to implement the Order, and paragraph 8(b)(4) empowers OPR to submit cases determined to require investigation to appropriate investigative groups within the Department. That provision has always been interpreted to give OPR the authority to direct the Audit Staff to initiate an audit. That authority has been exercised on numerous occasions, including audits of Justice Management Division activities. Moreover, paragraph 8(c)(4) directs the Audit Staff to provide audit assistance to investigative organizations as required. Finally, as the entity within the Department with the primary responsibility for the enforcement of the Department's regulations proscribing waste, fraud and abuse, OPR has inherent authority to direct the Audit Staff to conduct such audits as OPR deems necessary to fulfill its responsibilities. A copy of Department Order 2900.5A is attached.
2. Q. At present, how many employees are permanently assigned to OPR? Are any of these individuals CPA's? Do any of these individuals have degrees in accounting?
 - A. At present, OPR is assigned eight permanent employees. A new position has recently been authorized, but it has not been filled. None of the employees currently assigned to OPR are Certified Public Accountants. None of the employees currently assigned to OPR have degrees in accounting, although two attorneys have degrees in business/economics.
3. Q. OMB Circular A-73 requires that the Department designate an official to be responsible for coordinating audit activities of the Department. Testimony before a House Subcommittee last year by OMB identified the Assistant Secretary for Administration, a program manager, for this function. As of today, who in the Department is the responsible official for A-73 purposes?

- A. The Audit Staff's annual audit work plan is approved by the Deputy Attorney General in compliance with OMB Circular A-73. As of this date, the Department's Audit Staff carries out its audit responsibilities under the general direction of the Assistant Attorney General for Administration (AAG/A). However, this has not affected the conduct of audits performed on the Justice Management Division's programs, operations, activities and functions. The Audit Staff has complete independence in selecting programs for audit, establishing the scope of those audits, conducting them as it sees fit, and making such reports and recommendations as it deems appropriate. Results of audits of programs of the Justice Management Division, which the AAG/A heads, are reported to the Attorney General and the Deputy Attorney General--not to the AAG/A. In addition, all audit reports, irrespective of the unit audited, that contain significant findings are provided to the Deputy Attorney General or Associate Attorney General. Finally, the OPR often calls upon the Audit Staff to conduct special reviews and these are reported directly to the Counsel, OPR.

As described in answer to question 5, notification letters and a reorganization package were submitted to the Congress the week of June 8, 1987, to propose that the current Audit Staff be elevated and report directly to the Attorney General and the Deputy Attorney General. In addition, the program evaluation unit of the Executive Office for United States Attorneys is to be merged with the Audit Staff.

4. Q. OMB Circular A-50 requires that the Department designate a single top manager to oversee audit follow up. Last year OMB testified that this manager was the Deputy Attorney General. As of today, who in the Department is the responsible manager for A-50 purposes?
- A. As stated in Department Order 2900.6, "Audit Follow up and Resolution Policy," the Deputy Attorney General is the Department's audit follow up official and has the responsibility for audit follow up, including resolution and corrective action. That designation has not changed since the Order was issued in 1983. A copy of Department Order 2900.6 is attached.
5. Q. Please describe in detail the current proposal to reorganize the Department's audit activities. How will this proposal impact on the bureau-level audit units? What, if any, audit coordination and follow-up respon-

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responsibilities would OPR have in the event a new Office of Audit and Review is created? Who will head that new office and to whom will he report?

- A. Attached is a copy of the notification letter from Harry H. Flickinger, Assistant Attorney General for Administration, to Chairman Peter W. Rodino, Jr., of the House Committee on the Judiciary, dated June 5, 1987, and describing, *inter alia*, the reorganization of the Department's audit activities. The reorganization should have no effect on OPR's responsibilities. The director of the new Office of Audit and Program Evaluation has not yet been named. It should also be noted that, at the request of Senators Biden and Hollings (their letter is also attached), the planned reorganization has been temporarily deferred pending further discussions with Congress.
6. Q. On May 18, 1987, the Washington Post reported that OPR's "roundup of cases" for 1984 and 1985 first appeared in the Department's pressroom in May 1987, only after the New York Daily News and a federal prisoner in Danbury, Connecticut filed FOIA claims for the information contained in these reports. Please explain the reporting requirements for OPR, and the Department's policy for making OPR reports available to the public and Congress. When will OPR's "roundup of cases" for 1986 be completed and made available to Congress and the public?
- A. The reporting requirements for OPR are found at 28 C.F.R. §0.39a (i)(3). That provision requires that the Counsel submit to the Attorney General "[a]n annual report . . . reviewing and evaluating the activities of internal inspection units, or where there are no such units, the discharge of comparable duties within the Department." Release of OPR's reports to the Congress and the public are the prerogative of the Attorney General. In the past, each OPR report was released to the public shortly after submission to the Attorney General. The 1984 and 1985 Reports were inadvertently not released as promptly as in past years. OPR anticipates, consistent with past practices, that the 1986 Report will be completed by the fall of 1987, and will be released thereafter.
7. Q. Public Law 96-132, sec. 22 (Nov. 30, 1979) established an Office of Special Investigator in the Immigration and Naturalization Service of the Justice Department. Did the Justice Department ever implement the provisions of this law? If not, why not?

- A. Section 22 of Pub. L. No. 96-132 provided that, effective November 30, 1979, an Office of Special Investigator was to be established at the Immigration and Naturalization Service. Section 22, however, expired under its own terms on November 30, 1982, almost five years ago, and is no longer in force.

Congress was notified in December 1980 of the establishment of the Office. Copies of the signed organization chart and of the December 1, 1980, notification letter from Kevin D. Rooney, Assistant Attorney General, to the Honorable Peter W. Rodino, Jr., are attached. It is unclear how fully that Office implemented the provisions of section 22 while it was in effect. In any event, in January of 1984, the Department notified Congress that, section 22 of Pub. L. No. 96-132 having expired, the Office of Special Investigator would be disestablished, and the INS Office of Professional Responsibility and Office of Field Inspections and Audit would report directly to the Commissioner and Deputy Commissioner of the INS. A copy of the January 27, 1984, notification letter from Mr. Rooney to Mr. Rodino is also attached.

DEPARTMENT
OF JUSTICE

Order

DOJ 2900.5A

Mar. 5, 1986

Subject: RESPONSIBILITIES FOR THE PREVENTION, DETECTION, AND REPORTING
OF WASTE, FRAUD, AND ABUSE IN DEPARTMENT OF JUSTICE PROGRAMS
AND ACTIVITIES

1. **PURPOSE.** This order establishes responsibilities for the prevention, detection, and reporting of waste, fraud, and abuse in Department of Justice (DOJ) programs and activities. The order requires all DOJ employees to be responsible for preventing, detecting, and reporting waste, fraud, and abuse, especially in those programs and activities deemed most vulnerable, and that any situations or patterns evidencing waste, fraud, or abuse in DOJ programs be reported and investigated.
2. **SCOPE.** The order applies to all employees and organization units within the DOJ.
3. **CANCELLATION.** Order DOJ 2900.5 is cancelled.
4. **BACKGROUND.**
 - a. The need to vigorously pursue the reduction of waste, fraud, and abuse in government programs and activities has been repeatedly identified in Presidential initiatives, congressional hearings, and General Accounting Office reports.
 - b. The President's Council on Integrity and Efficiency (PCIE) is pursuing the reduction of waste, fraud, and abuse with the full support of the President. In addition to detection and reporting of waste, fraud, and abuse, the PCIE is encouraging all government organizations to focus on prevention.
5. **AUTHORITY.**
 - a. The Budget and Accounting Procedures Act of 1950 (31 U.S.C. 3512) directs the head of each executive agency to:

". . . establish and maintain systems of accounting and internal controls that provide -

Distribution: BUR/H-1
OBD/H-2
SPL-23

Initiated By: Audit Staff
Justice Management Division

DOJ 2900.5A
Mar. 5, 1986

- (1) complete disclosure of the financial results of the activities of the agency;
 - (2) adequate financial information the agency needs for management purposes;
 - (3) effective control over, and accountability for, assets for which the agency is responsible, including internal audit. . . ."
- b. Various Criminal Statutes (18 U.S.C. 287, 371, 641 and 1001) prohibit such types of fraud as filing fraudulent claims; conspiring to defraud the United States; embezzling, stealing or converting public money, property, or records for one's own use or that of another; and making false statements or entries knowingly and willfully to conceal or cover up a material fact.
- c. Office of Management and Budget Circular No. A-123, Revised, Internal Control Systems, dated August 16, 1983, requires agencies to maintain effective systems of accounting and administrative controls. Internal control is the plan of organization and methods and procedures adopted by management to provide reasonable assurance that obligations and costs are in compliance with applicable law; funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and revenues and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports and to maintain accountability over the assets.
- d. The Federal Managers' Financial Integrity Act (Public Law 97-255):
- (1) Requires that each executive agency's internal accounting and administrative controls be established in accordance with standards prescribed by the Comptroller General, and provide reasonable assurance that obligations and costs are in compliance with applicable laws; funds, property, and other assets are safeguarded; and revenues and expenditures applicable to agency operations are properly recorded and accounted for.
 - (2) Requires an annual statement from the Attorney General to the President and the Congress stating whether the Department's system of internal accounting and administrative control complies with the requirements of the Act and identifying the agency's material control weaknesses, if any, and the plans for correcting any such weaknesses.

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6. REFERENCE. Guide for the Implementation of the Federal Managers' Financial Integrity Act and OMB Circular A-123, Evaluation Staff, Office of the Controller, Justice Management Division (JMD), May 1984.

7. POLICY.

- a. Employees of the Department are responsible for being alert for situations that may involve waste, fraud, and abuse in DOJ programs and activities, and shall report any such waste, fraud, and abuse to the appropriate organizational and/or Departmental authorities. In addition, they are responsible for taking action to prevent and/or correct such situations that are within their authority.
- b. The Office of Professional Responsibility (OPR), JMD Audit Staff, and all other internal audit and inspection groups within the Department shall carry out this order in the normal course of their review activity, or when assigned to perform special reviews in areas identified as highly susceptible to waste, fraud, and abuse.
- c. Investigation of matters that appear to involve a violation of law, shall be accomplished by the Federal Bureau of Investigation (FBI) or other groups within the Department, as deemed appropriate by the Attorney General or OPR.

8. RESPONSIBILITIES.

- a. All employees of the Department shall be responsible for being alert for situations that may involve waste, fraud, and abuse in DOJ programs and activities, and they are accountable for reporting any such waste, fraud, and abuse to the appropriate organizational and/or Departmental authorities. In addition, they are responsible for taking action to prevent and/or correct such situations that are within their authority.
- b. The OPR has the responsibility to receive and review any information or allegation concerning conduct by a Department employee that: may be in violation of laws, regulations, orders, or applicable standards of conduct; or, may constitute mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. However, this provision does not preempt the primary responsibility of internal inspection units of the Department to receive such information or allegations and to conduct investigations. The OPR will also ensure, with the assistance of all employees and organizations within the DOJ, the overall implementation of this order by:

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- (1) Establishing policies and procedures for all employees of the Department to report to the appropriate Departmental authority internal situations that may involve waste, fraud, and abuse in DOJ programs and activities.
 - (2) Establishing policies and procedures for the Audit Staff and all internal audit and inspection groups to report suspected waste, fraud, and abuse to OPR.
 - (3) Reviewing and evaluating reports of suspected waste, fraud, and abuse to determine the need for investigation.
 - (4) Submitting cases determined to need investigation to the FBI or other appropriate investigative groups within the Department.
 - (5) Reviewing and evaluating investigative reports of suspected waste, fraud, and abuse and submitting cases of possible violations of law to the Criminal Division for prosecutive action.
 - (6) Maintaining control records on the type, status, and disposition of cases referred to it for investigations.
 - (7) Including in its reports to the Attorney General, a separate section identifying the type, volume, and disposition of suspected waste, fraud, and abuse cases referred for investigation.
 - (8) Disseminating information to the JMD Audit Staff and to all internal audit and inspection groups as to the types of waste, fraud, and abuse that are being disclosed and identifying the types of clues or techniques that lead to their detection.
 - (9) Disseminating information to management which discloses those circumstances likely to give rise to waste, fraud, and abuse so that appropriate preventive or corrective actions can be taken.
- c. The JMD Audit Staff, an independent audit and review staff, has the responsibility to audit Departmental programs, functions, and activities as a service to Department management, pursuant to Order DOJ 2900.1C. The JMD Audit Staff shall, as an integral part of its audit effort, be responsible for:

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- (1) Including steps in audit programs, where appropriate, to test the adequacy and effectiveness of internal controls as a means of detecting situations or transactions that could be indicative of waste, fraud, or abuse.
 - (2) Exercising due professional care in detecting fiscal, programmatic, and/or administrative waste, fraud, and abuse on the part of any official or employee of the Department or its component organizations during the course of planned audit activities or when assigned to perform special reviews in areas that may be highly susceptible or vulnerable to waste, fraud, or abuse.
 - (3) Referring identified potential criminal irregularities (internal and external) to the FBI, OPR, or the Criminal Division pursuant to the established policy for the referral and investigation of audit found criminal irregularities.
 - (4) Providing audit assistance to investigative organizations when technical expertise is needed to conduct investigations of suspected waste, fraud, or abuse referred to them.
 - (5) Ensuring that all its professional personnel are adequately trained in fraud detection techniques and are familiar with the reporting requirements of the OPR.
- d. Internal audit and inspection groups within the Department (other than the JMD Audit Staff) shall, as an integral part of their review activities, be responsible for:
- (1) Exercising due professional care in detecting fiscal, programmatic, and/or administrative waste, fraud, or abuse on the part of any official or employee of the organization or its field components during the course of planned reviews or when conducting special reviews in areas that are highly susceptible to waste, fraud, or abuse.
 - (2) Including steps in audit and inspection programs, where appropriate, to test the adequacy and effectiveness of internal controls as a means of detecting situations or transactions that could be indicative of waste, fraud, or abuse.
 - (3) Reporting matters in which waste, fraud, or abuse are suspected to the OPR for its review and evaluation.

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- (4) Providing audit assistance to investigative organizations when technical expertise is needed to effectively conduct investigations of suspected waste or abuse referred to them.
- (5) Ensuring that all their audit and inspection personnel are adequately trained in fraud detection techniques and are familiar with the reporting requirements of the OPR.
- e. The FBI and other investigative groups within the Department shall be responsible for:
 - (1) Investigating suspected waste, fraud, or abuse cases that are referred to them by the OPR.
 - (2) Submitting an investigative report to the OPR on each matter in which waste, fraud, or abuse is suspected, in accordance with reporting procedures established by the OPR.

9. IMPLEMENTATION.

- a. All employees of the Department shall be apprised of their responsibilities under this order. Therefore, all supervisors should arrange for the distribution or circulation of a copy of this order to each employee under their supervision.
- b. The JMD Audit Staff and all internal audit and inspection groups shall be responsible for developing and implementing the necessary approaches and procedures considered relevant for the prevention, detection, and reporting of waste, fraud, and abuse. Effective approaches should be documented by integrating them into audit and inspection programs.
- c. Each organization involved in audit inspection or investigative activities shall be responsible for the training of their audit, inspection, and investigative personnel.
- d. The OPR shall be responsible for developing the necessary procedures and report formats required to discharge its responsibilities under this order.



EDWIN MEESE III
Attorney General



DEPARTMENT OF THE TREASURY ORDER

DATE: January 13, 1987

NUMBER: 100-02

SUBJECT: Establishment of the Office of the Inspector General and Delegation of Authority to the Inspector General

By virtue of my authority as Secretary of the Treasury, including the authority contained in 31 U.S.C. 321(b), and 5 U.S.C. 301 and 302, it is hereby ordered that:

1. ESTABLISHMENT OF THE OFFICE OF THE INSPECTOR GENERAL (OIG).

a. There is hereby established within the Department of the Treasury, the Office of the Inspector General, which shall conduct and supervise audits and investigations relating to programs and operations within the Department as detailed in this order.

b. The Office of the Inspector General shall also provide leadership and coordination and recommend policies for activities designed to:

(1) promote economy, efficiency, and effectiveness in the administration of Departmental programs and activities;

(2) prevent and detect fraud, waste, and abuse in Departmental programs and operations; and

(3) inform the Secretary and Deputy Secretary of any problems or concerns with the administration of such programs and operations and the need for and progress of corrective action.

c. The Office of the Inspector General shall be independent of all other offices and bureaus within the Department.

d. The head of the Office of the Inspector General shall be the Inspector General (IG) who shall be appointed by the Secretary of the Treasury and who shall report to and operate under the general supervision of the Secretary and/or the Deputy Secretary.

e. No officer or employee of the Department shall prevent the Inspector General from initiating, carrying out, or completing any duly authorized audit or investigation, or prevent any duly appointed officer or employee of the Office of the Inspector General from obtaining access to any information or documentation which the Inspector General has determined is necessary to the execution of an audit or investigation.

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2. AUTHORITY AND RESPONSIBILITY OF THE INSPECTOR GENERAL FOR THE CONDUCT AND OVERSIGHT OF INVESTIGATIONS.

a. The Inspector General is hereby delegated the authority to receive, analyze and evaluate allegations of illegal acts, violations of the Rules of Conduct of the Treasury Department and of the bureaus, violations of the merit system, and any other misconduct concerning any official or employee of any Treasury office or bureau or, in the case of alleged illegal acts or misconduct, any Treasury contractor, subcontractor, or offeror.

b. All employees and officials of the Department of the Treasury shall report to the Inspector General all matters which they believe raise questions of illegality or wrongdoing pursuant to paragraph a. above. Employees and officials who work in bureaus or offices with internal affairs or inspection offices, shall report such matters either to the head of those offices or to the Inspector General.

c. The Inspector General is hereby delegated the authority to initiate, organize, conduct, direct and control investigations of any allegations received pursuant to paragraph a. above, concerning the Department's senior officials, i.e., Presidential appointees, SES members, and GS or GM-15s and above.

d. If the allegation to be investigated involves a non-senior official or employee of a Treasury law enforcement bureau, the Inspector General shall refer the investigation to that bureau's internal affairs or inspection office and shall receive a full report of the investigation and any action taken on the matter referred.

e. If the allegation to be investigated involves a non-senior official or employee of a Treasury bureau or office that does not have an internal affairs or inspection office, the Inspector General may refer the investigation to a bureau which has such an office, which will undertake the investigation and will prepare a full report for the Inspector General of the investigation and of any action taken on the matter referred.

f. Paragraphs d. and e. above notwithstanding, the Inspector General shall conduct any investigation which he or she is directed to conduct by the Secretary or Deputy Secretary concerning any allegation of misconduct by an official, employee or contractor of the Treasury. The Inspector General may also conduct any investigation which involves alleged notorious conduct or other matter which, in his or her opinion, is especially sensitive or of Departmental significance.

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g. If an allegation involves a matter which is appropriate for the Departmental or a bureau grievance or appeal procedure, or other routine management action, the Inspector General may refer such matter to the appropriate office or bureau for handling.

h. This Order does not change or reduce the authority of Treasury offices or bureaus which had established internal affairs and inspection offices as of July 18, 1978, to conduct investigations in accordance with their own internal procedures, with the exception of those investigations being conducted by the Inspector General. However, when the Inspector General gives notice to a bureau or office that an OIG investigation is being conducted in that bureau or office, no internal investigation will be initiated and any ongoing investigation into the same matter will immediately cease.

i. All law enforcement bureau internal affairs and inspection offices shall periodically report to the Inspector General their significant current investigative activities.

j. The Inspector General may review, evaluate, and approve all Departmental and bureau programs, plans, policies and operations for investigative misconduct and may make recommendations for changes.

k. The Inspector General shall require, receive, review, and analyze all reports informing the Secretary or Deputy Secretary of any significant problems, abuses, or deficiencies disclosed in any bureau or office investigation and the actions taken to correct them.

l. The Inspector General may, at his or her discretion, report the results of the investigation of any senior official to the Secretary or Deputy Secretary or other appropriate management official for action.

m. The Inspector General is hereby delegated authority to receive all matters referred to the Department of the Treasury by the Special Counsel of the Merit Systems Protection Board, regarding allegations or prohibited personnel practices. He or she may investigate such matters or, as appropriate, may refer such matters for investigation to a law enforcement bureau internal affairs or inspection office, except for matters concerning the Internal Revenue Service (IRS), which shall be referred directly to that bureau.

n. The Inspector General shall receive and review reports of investigations by any bureau or office conducting such investigations, except for IRS, and may prepare or delegate to the appropriate bureau or office for preparation, final reports to

the Special Counsel for review and signature of the Deputy Secretary or Under Secretary as the Secretary's designees, except for IRS which shall prepare its own final reports to the Special Counsel.

3. AUTHORITY AND RESPONSIBILITY OF THE INSPECTOR GENERAL FOR THE CONDUCT AND OVERSIGHT OF AUDITS.

- a. The Inspector General is hereby delegated complete authority for performing internal audits of all Treasury bureaus and offices, with the exception of the law enforcement bureaus. The law enforcement bureaus are the: Internal Revenue Service, U.S. Customs Service, Bureau of Alcohol, Tobacco and Firearms, and U.S. Secret Service.
- b. The Inspector General may audit or authorize law enforcement bureau internal affairs or inspection offices to audit any Treasury program, activity, or function, including any Treasury or bureau contractor, subcontractor, or offeror.
- c. The Inspector General shall coordinate all requests submitted by IGs from other Government departments and agencies for audit services within the Department.
- d. The Inspector General and, as appropriate, the Heads of Internal Audit in the law enforcement bureaus shall distribute copies of final audit reports to all headquarters and field officials responsible for taking corrective action on matters covered by those reports.
- e. The Inspector General shall keep the Secretary or Deputy Secretary informed of any significant problems, abuses, or deficiencies disclosed in audits and the actions taken to correct them.
- f. The Inspector General is responsible for formulating Departmental audit policies and priorities and assuring implementation of Federal audit standards in the Department.
- g. The Inspector General may review, evaluate, and approve law enforcement bureau internal affairs and inspection offices' programs, plans, policies, reports and operations for internal auditing and may make recommendations for changes.
- h. The Inspector General shall receive and may review and analyze all law enforcement bureau internal affairs and inspection offices' audit plans and reports as a basis for evaluating audit services to management.
- i. All law enforcement Bureau internal affairs and inspection offices shall periodically report to the Inspector General their significant current audit activities.

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4. AUTHORITY OF THE INSPECTOR GENERAL FOR INTELLIGENCE ACTIVITIES.

a. Pursuant to Section 4 of Executive Order 12334, the Inspector General shall, together with the General Counsel, to the extent permitted by law, report to the President's Intelligence Oversight Board, concerning intelligence activities that he or she has reason to believe may be unlawful or contrary to Executive order or Presidential directive.

b. All Treasury employees shall report to the Inspector General, the General Counsel, or the head of the inspection or internal affairs office of their bureau, any matters which they believe raise questions or propriety or legality under Executive Order 12333.

c. At appropriate intervals, The Inspector General shall review any foreign intelligence activities of the Treasury Department to determine whether any such activities raise questions of propriety under Executive Order 12333. Any questions arising from this review as to the legality of such activities shall be referred to the General Counsel.

d. All law enforcement bureau internal affairs and inspection offices shall review at appropriate intervals the activities of their bureaus in their relations with the United States foreign intelligence agencies to determine whether such activities raise questions of legality or propriety. Any questions of legality or propriety arising from this review shall be reported to the Inspector General who shall refer to the General Counsel any illegal activities.

e. The Inspector General, together with the General Counsel, shall review any agreement between the Treasury Department or any of its bureaus or offices and the Central Intelligence Agency (CIA), dealing with arrangements of a continuing nature.

f. The Inspector General, together with the General Counsel, shall, when requested, consult with the Office of Intelligence Support regarding CIA or Treasury requests for support or assistance where there is no current written arrangement for such support or assistance.

g. The Inspector General shall, together with the General Counsel, consult with the Under Secretary, when requested, with regard to arrangements for support or assistance between the Treasury and any other intelligence agency of the Federal government except for arrangements between the Federal Bureau of Investigation and the Internal Revenue Service, which shall be the responsibility of the Commissioner of Internal Revenue.

5. PERSONNEL AUTHORITY.

a. The Inspector General may obtain as needed, under procedures he or she develops, investigative, audit, and support personnel from law enforcement bureau internal affairs and inspection offices for conducting investigations or audits under his or her direct supervision. Any detailed personnel shall remain on the rolls of the service or office from which they were detailed but will report exclusively to the Inspector General regarding the matter being investigated or audited.

b. Bureau heads shall consult with the Inspector General in recruiting and selecting candidates to head the internal affairs or inspection offices of the law enforcement bureaus. Bureau heads shall, prior to issuance, submit annual performance evaluations of incumbent heads of internal affairs or inspection offices to the Inspector General for review.

6. REGULATORY AUTHORITY. The Inspector General is hereby delegated authority to promulgate any rules, regulations, directives, memoranda of understanding, policies and procedures necessary to implement his or her duties and responsibilities pursuant to this Order.

7. CANCELLATION AND CONSOLIDATION OF PREVIOUS ORDERS.

a. This Order supersedes the following Treasury Department Orders (TDO):

(1) TDO 256, "Establishment of the Position of Inspector General," dated July 18, 1978;

(2) TDO 101-14, "Transfer of the Office of Audit to the Inspector General," dated February 20, 1980; and

(3) TDO 101-28, "Transfer of Internal Audit Function and Internal Investigative Functions and Positions to the Office of the Inspector General," dated June 7, 1982.

b. This Order supersedes those parts of the following orders which set forth duties of the Inspector General:

(1) TDO 240 (Revision 1), "Liaison Between Subordinate Organizational Units of the Treasury and the Central Intelligence Agency," dated July 18, 1978;

(2) TDO 246 (Revision 1), "Responsibilities for Oversight of Foreign Intelligence Activities Under Executive Order 12036," dated July 18, 1978. Inspector General's duties are set forth in paragraphs number 1, 3, 5, and 6;

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(3) TDO 101-4, "Delegation of Authority to the Inspector General to Receive Referrals from the Merit Systems Protection Board, and Delegation to the Deputy Secretary, to the Under Secretary and to the Commissioner of Internal Revenue to Sign Final Reports," dated April 13, 1979. Inspector General's duties are set forth in Part 1 of this Order; and

(4) TDO 101-19, "Delegations of Authority to the Deputy Secretary and Inspector General Relating to Treasury Auditing and Inspection Activities," dated February 27, 1980.



James A. Baker, III
Secretary of the Treasury

STATEMENT FOR THE RECORD BY
HONORABLE CONSTANCE HORNER, DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT

FOR A HEARING OF THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ON

S. 908

THE INSPECTOR GENERAL ACT AMENDMENTS OF 1987

MAY 12, 1987

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

THANK YOU FOR THIS OPPORTUNITY TO PRESENT FOR THE RECORD THE
OFFICE OF PERSONNEL MANAGEMENT'S VIEWS ON S. 908, THE
INSPECTOR GENERAL ACT AMENDMENTS OF 1987. SINCE THE
HONORABLE JOSEPH R. WRIGHT, JR., DEPUTY DIRECTOR OF THE
OFFICE OF MANAGEMENT AND BUDGET, HAS PRESENTED THE ADMINIS-
TRATION'S VIEWS ON THE BILL IN GENERAL, I WOULD LIKE TO
LIMIT MY COMMENTS TO THE BILL'S PROVISIONS CREATING A
STATUTORY INSPECTOR GENERAL AT OPM.

WE FRANKLY HAVE SOME RESERVATIONS AS TO WHETHER IT IS
NECESSARY TO ESTABLISH A STATUTORY INSPECTOR GENERAL AT OPM.
WE BELIEVE THAT OUR EXISTING NON-STATUTORY INSPECTOR GENERAL
HAS OPERATED VERY WELL:

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- WE DO HAVE AN INSPECTOR GENERAL WHO REPORTS DIRECTLY TO THE DIRECTOR OF OPM, AND WHO IS RESPONSIBLE FOR THE AUDIT AND INVESTIGATION OF ALL OPM FUNCTIONS.
- OUR INSPECTOR GENERAL IS NOT RESTRICTED FROM LOOKING AT ANY AREA OF OPM ACTIVITIES.
- OUR INSPECTOR GENERAL OPERATION COMPLIES FULLY WITH OMB GUIDANCE ON FOLLOWUP OF AUDIT RECOMMENDATIONS, AND PROVIDES THE DIRECTOR WITH A SEMI-ANNUAL REPORT ON THE STATUS OF AUDIT FINDINGS.
- THE DIRECTOR IS FULLY INFORMED OF INSPECTOR GENERAL FINDINGS, AND ENSURES THAT ANY SERIOUS AUDIT ISSUES ARE RESOLVED PROMPTLY.
- OUR INSPECTOR GENERAL REVIEWS PROGRAM OFFICE EVALUATIONS TO ENSURE COMPLIANCE WITH OMB AND GAO STANDARDS.

WE TAKE THE NEED FOR INTERNAL MONITORING AND REVIEW VERY SERIOUSLY AT OPM, AND WE BELIEVE THAT OUR EXISTING INSPECTOR GENERAL OPERATION HAS PROVEN TO WORK WELL. WHILE WE ACCORDINGLY DO NOT SEE A NEED FOR PLACING THIS PROGRAM ON A

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STATUTORY BASIS, WE RECOGNIZE THAT, AS A PART OF THE MOVEMENT TO A GOVERNMENTWIDE SYSTEM OF STATUTORY INSPECTORS GENERAL, THE CONGRESS MAY WANT TO INCLUDE OPM. WE HAVE NO STRONG OBJECTION TO SUCH A CHANGE.

HOWEVER, WE DO OBJECT TO ONE PROVISION OF S. 908 CONCERNING OPM. THIS IS THE PROVISION THAT WOULD MOVE TO THE NEW STATUTORY INSPECTOR GENERAL'S OFFICE TWO UNITS FROM OUR RETIREMENT AND INSURANCE GROUP, NAMELY THE INSURANCE AUDITS UNIT AND THE PROGRAM INTEGRITY SECTION OF THE RETIREMENT INSPECTION BRANCH.

WE BELIEVE THAT THE PROPOSAL TO MOVE THESE TWO UNITS IS BASED ON A MISUNDERSTANDING OF THEIR FUNCTION AND OPERATION. THESE TWO OFFICES ARE NOT INTERNAL AUDIT UNITS, BUT ARE INSTEAD INTEGRAL PARTS OF PROGRAM OPERATIONS. THE INSURANCE AUDITS UNIT DOES NOT AUDIT OR EVALUATE OPM OPERATIONS, BUT INSTEAD AUDITS THE 400-PLUS HEALTH BENEFITS PLANS WITH WHICH WE CONTRACT UNDER THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM. THIS FUNCTION IS PART OF NORMAL CONTRACT ADMINISTRATION OF OUR INSURANCE CONTRACTS, SINCE THE HEALTH BENEFITS LAW REQUIRES US TO MAKE A CONTINUING STUDY OF THE OPERATION OF THE PROGRAM, INCLUDING THE EXPERIENCE OF OUR HEALTH BENEFITS PLANS. WE BELIEVE IT IS IMPORTANT THAT THESE AUDITORS CONTINUE TO PLAY THEIR CURRENT INTEGRAL ROLE IN CONTRACT NEGOTIATION AND ADMINISTRATION. REMOVING THEM

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FROM OUR RETIREMENT AND INSURANCE GROUP WOULD UNNECESSARILY FRAGMENT THE ADMINISTRATION OF OUR HEALTH INSURANCE PROGRAM.

SIMILARLY, OUR RETIREMENT PROGRAM INTEGRITY SECTION IS NOT AN INTERNAL AUDIT UNIT, BUT IS A FUNDAMENTAL PART OF OUR RETIREMENT PROGRAM OPERATION. IN OUR EFFORTS TO IDENTIFY AND ELIMINATE FRAUDULENT OR ERRONEOUS ANNUITY PAYMENTS, WE OPERATE A MAJOR COMPUTER MATCHING PROGRAM, WHERE WE MATCH OUR RECORDS WITH OTHER AGENCIES' RECORDS TO TRY TO IDENTIFY PEOPLE RECEIVING ANNUITY PAYMENTS TO WHICH THEY ARE NOT ENTITLED. THE PROGRAM INTEGRITY SECTION IS WHERE WE SEND THE "HITS," THE CASES THE COMPUTER IDENTIFIES AS POSSIBLY FRAUDULENT OR ERRONEOUS. THE PROGRAM INTEGRITY SECTION REVIEWS EACH CASE SO IDENTIFIED AND TAKES WHATEVER ACTION IS NEEDED TO CORRECT IT. THIS UNIT HAS NOTHING TO DO WITH AUDITING OR EVALUATING RETIREMENT PROGRAM OPERATIONS, BUT IS INSTEAD AN ESSENTIAL PART OF OUR NORMAL PROGRAM CONTROL OPERATIONS.

WE HOPE THAT THE COMMITTEE WILL, WITH A FULLER UNDERSTANDING OF THE ACTUAL PURPOSE OF THESE TWO UNITS--NOTWITHSTANDING THEIR TITLES--RECOGNIZE THAT THESE ARE PROGRAM OPERATION ACTIVITIES RATHER THAN INTERNAL AUDIT OR EVALUATION ACTIVITIES, AND DELETE THE PROVISION OF S. 908 THAT WOULD MOVE THESE TWO OFFICES TO THE NEW STATUTORY INSPECTOR

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GENERAL'S OFFICE. I CAN ASSURE THE COMMITTEE THAT WE AT OPM WILL SEE TO IT THAT OUR INSPECTOR GENERAL, WHETHER STATUTORY OR NOT, WILL HAVE ALL THE TOOLS AND RESOURCES HE NEEDS TO DO HIS JOB, COVERING ALL PROGRAMS AND ACTIVITIES OF OPM.

THANK YOU.

WILLIAM V. ROTH, JR. DELAWARE CHAIRMAN
 TED STEVENS ALASKA
 CHARLES MUE MATHIAS, JR. MARYLAND
 WILLIAM S. COHEN MAINE
 DAVE DURENBERGER MINNESOTA
 WARREN B. RUSSMAN NEW HAMPSHIRE
 THAD COCHRAN MISSISSIPPI
 THOMAS F. EAGLETON MISSOURI
 LAWTON CHILES FLORIDA
 SAM NUNN GEORGIA
 JOHN GLENN OHIO
 CARL LEVIN MICHIGAN
 ALBERT GORE, JR. TENNESSEE

FRANKLIN G. POLK, CHIEF COUNSEL AND STAFF DIRECTOR
 MARGARET P. CUNNEAW, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
 GOVERNMENTAL AFFAIRS
 WASHINGTON, DC 20510

May 7, 1986

The Honorable Joseph R. Wright, Jr.
 Deputy Director
 Office of Management and Budget
 Washington, D. C. 20503

Dear Joe:

As you know, my Committee is considering legislation (S. 2005) I introduced amending the Inspector General Act of 1978 to make certain technical changes recommended by your office and to strengthen audit and investigative operations in smaller Federal agencies. One provision of this bill calls for a study of such activities in agencies in which an audit unit has not been established. At a recent meeting with my Committee staff, representatives of the President's Council on Integrity and Efficiency (PCIE) volunteered to undertake the study required by the bill now, rather than await enactment of S. 2005.

I am writing you in your capacity as chairman of the PCIE to request that this study be undertaken right away. The Committee is planning a mark-up of this legislation later this month, but it may be several more months before the Congress takes final action. I want to get started now on completing the task of strengthening audit and investigative capabilities at all Federal agencies, and this study should therefore be completed as soon as possible.

In addition to examining the agencies at which there is now no audit or investigative office, the PCIE should evaluate the extent and effectiveness of such offices in agencies having very small audit or investigative staffs, that is, those with less than 10 employees. There may be an opportunity to provide audit and investigative services more efficiently at a central location or by using existing Inspector General offices. There may be other issues meriting PCIE attention following mark-up of S. 2005, so the PCIE team conducting this study should contact the Committee staff before it finalizes the study design.

We appreciate very much the PCIE's willingness to undertake this study and look forward to the results. If you have any questions, please contact Roger Sperry at the Committee office. 224-4751.

Sincerely,



William V. Roth, Jr.
 Chairman

cc: Jack Brooks
 Charles A. Bowsher
 Richard P. Kussarow



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 17 1986

Honorable William V. Roth, Jr.
Chairman, Committee on
Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Bill:

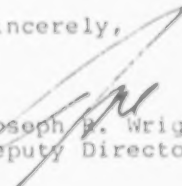
Thank you for your letter and your request for the President's Council on Integrity and Efficiency (PCIE) to undertake a study on the effectiveness of internal audit and investigative operations in smaller Federal establishments.

On behalf of the Council, I accept your request. The PCIE discussed your project request at its retreat on June 5th and decided to establish a committee and develop a project plan. The PCIE committee will be in touch with your staff when formulating the final project plan.

The PCIE agrees with you and the Senate Governmental Affairs Committee on the importance of establishing a sufficient audit presence in governmental entities. The different missions and goals of each agency, however, necessitates that the Committee adapt the Inspector General Act to the needs of each agency rather than extending the provisions of the act Government-wide. The PCIE study you have requested will be aimed at assisting the Committee in making these decisions.

Again, thank you for your letter and your interest in strengthening Federal audit activities.

Sincerely,



Joseph P. Wright, Jr.
Deputy Director

JOHN GLENN, OHIO, CHAIRMAN
 LANTON CHILES, FLORIDA
 SAM NUNN, GEORGIA
 CARL LEVIN, MICHIGAN
 JIM SASSER, TENNESSEE
 DAVID PRYOR, ARKANSAS
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 JEFF BINGHAM, NEW MEXICO
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 WILLIAM S. COHEN, MAINE
 WARREN S. RUDMAN, NEW HAMPSHIRE
 JOHN HENZ, PENNSYLVANIA
 PAUL S. TROTT, JR., VIRGINIA

LEONARD WEISS, STAFF DIRECTOR
 JO SHIRRE BARNHART, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
 GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

April 20, 1987

The Honorable Edwin Meese, III
 Department of Justice
 10th & Constitution Avenue, N.W.
 Washington, D.C. 20530

Dear General Meese:

On May 12, 1987 at 9:30 a.m. the Governmental Affairs Committee will hold a hearing on S. 908, the Inspector General Act Amendments of 1987, which will establish new statutory inspectors general in the Department of the Treasury, FEMA, OPM and the NRC. The hearing will also focus on the status of the internal audit and investigative units now administratively established in the Justice Department.

The Committee expects to pose questions to Justice Department representatives designed to elicit detailed explanations of the Department's current audit and investigation operations. I understand that Deputy Attorney General Arnold Burns, a member of the President's Council on Integrity and Efficiency, is not available on May 12th to provide oral testimony and a written statement addressing the matters set forth below. If possible, I would like Associate Attorney General Stephen Trott to testify, accompanied by any other Justice Department representatives whose knowledge of Department or bureau operations would aid the Committee's review.

1. What was DOJ's operating budget in 1986? How many FTE's did DOJ have in 1986?

2. Please provide a list of the name and location of each component of DOJ which carries out audits or internal investigations, or both, of the programs and operations of DOJ or one of its five bureaus, but does not carry out audits or investigations as an integral part of the conduct of the programs and operations of such entity. Please also provide the number of professional auditors and/or investigators in each component, and describe the responsibilities of each component.

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3. Please provide a list of the name and location of each component of DOJ which, in DOJ's view, carries out audits or internal investigations, or both, of the programs and operations of DOJ or one of its five bureaus as an integral part of the conduct of those programs and operations. Please also provide the number of professional auditors and/or investigators in each component and describe the responsibilities of each component.

4. In responding to paragraphs 2 and 3, please mention the following components which comprise or are found in the these named offices:

(a) the offices in DOJ referred to as the "Office of Professional Responsibility", the "Audit Staff, Justice Management Division" and the "Evaluation Staff, Justice Management Division";

(b) from the Immigration and Naturalization Service, the "Evaluation and Management Assistance Division", the "Policy and Procedures Section of the Office of Finance, Office of the Comptroller", the "Office of Field Inspection and Audit" and the "Office of Professional Responsibility";

(c) from the Bureau of Prisons, the "Financial Audit Section, Office of Financial Management", the "Office of Inspection" and the "Regional Audit Offices";

(d) from the United States Marshals Service, the "Office of Internal Inspection" and the "Evaluations Section of the Inspections Division".

(e) from the Federal Bureau of Investigations, the "Office of Professional Responsibility" and the "Audit Group, Office of Program Evaluation and Audit".

(f) from the Drug Enforcement Administration, the "Office of Professional Responsibility", the "Office of Program Planning and Evaluation" and the "Office of Inspections, Planning and Inspections Division".

5. Who is responsible for the general supervision of each of the components identified in paragraph 2?

6. Who is responsible for the general supervision of each of the components identified in paragraph 3?

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7. Are there any current situations where DOJ personnel rotate between performing audits or internal investigations of DOJ or one of its bureaus and conducting the entity's basic program responsibility? If so, please describe the circumstances under which this occurs at the Department or bureau level.

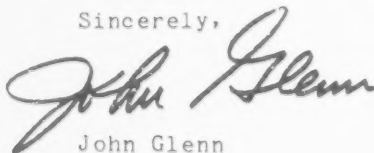
8. What are the reporting requirements for each of the components identified in paragraph 2? Please specify how often reports are issued and the titles of those individuals who receive copies of the reports at the time they are first issued. Does the Attorney General or Deputy Attorney General receive copies of all reports from these components, and if so, when in the reporting process? If not, why not?

9. What are the reporting requirements for each of the components identified in paragraph 3? Please specify how often reports are issued and the titles of those individuals who receive copies of the reports at the time they are first issued. Does the Attorney General or Deputy Attorney General receive copies of all reports from these components, and if so, when in the reporting process? If not, why not?

10. Does the Justice Department object to the establishment of a statutory inspector general in the Department? If so, please specify each ground for objection as a separate item.

There may be other areas as well that the Committee will consider. One hundred copies of DOJ's written statement, including twenty on standard, 8 and 1/2 by 11 inch paper, should be sent to Lorraine Lewis, Committee on Governmental Affairs, Room 340 Dirksen Senate Office Building, Washington, D.C. 20510, to arrive by 5:00 p.m. on Wednesday, May 6, 1987. Should any questions arise concerning this letter or the hearing, please feel free to contact Ms. Lewis at 224-4751.

Sincerely,



John Glenn
Chairman



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

12 MAY 1987

Honorable John Glenn
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter responds to your correspondence to the Attorney General regarding the Inspector General Act Amendments of 1987, S. 908, and supplements the Department's testimony on this subject.

In your letter your first inquiry was the amount of the Department's operating budget and the personnel strength in terms of full time equivalent (FTE) work years of the Department. For Fiscal Year 1986, the Department had a budget of \$3.86 billion to support 63,307 FTE.

Questions 2 through 9 inquire into the responsibilities of the components of the Department that conduct internal investigations or audits of the Department's activities. Specifically, you request us to differentiate between those units whose activities are the primary audit or investigative arm of a particular component and those units whose functions, while entailing review and evaluation duties, do not have audit or investigation as a primary responsibility. You also request the number of auditors or investigators in each component, the supervisory structure and the reporting responsibilities.

* * *

The Office of Professional Responsibility (OPR) has the overall authority to receive and review allegations of violations of any law, regulation, standard of conduct or Department of Justice order on the part of Department employees. It also has the responsibility to review conduct that may constitute mismanagement, waste, fraud and abuse. Department employees are obligated to notify OPR promptly of such conduct. The Counsel, OPR, exercises oversight with regard to all internal investigation units in the Department. These units are obligated to coordinate efforts closely with OPR and report their activities to OPR on a monthly basis. Moreover, all internal investigation units report to both the Counsel, OPR, and to their respective component head.

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Similarly, the Audit Staff of the Justice Management Division (JMD) formulates, implements and reviews Departmentwide audit policies standards and procedures. The Audit Staff has authority to conduct independent reviews of all Department organizations, programs and functions, as well as undertake external audits of expenditures made under Department contracts and grants. It conducts expanded scope audits consistent with Comptroller General standards. This encompasses financial and compliance, economy and efficiency, and program result audits. The Audit Staff establishes standards for the entire Department. It coordinates with other Department units carrying out audit responsibilities, and exercises oversight authority with regard to these units.

Each of the Department's law enforcement bureaus, i.e., the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Bureau of Prisons, the United States Marshals Service, and the Immigration and Naturalization Service (INS), has units whose primary responsibility is to conduct independent internal investigations and audits relating to activities within that agency. These units report to the head of the agency and have authority to conduct audits or investigations they determine appropriate. The internal investigations units investigate allegations of misconduct in the component. The work of the audit units include examining financial statements, determining compliance with applicable laws and regulations, evaluating the economy and efficiency of operations and examining the effectiveness in achieving program results.

Each component of the Department also has units that assist management in improving operations. While the work undertaken includes performing studies and evaluating the efficiency of operations, these efforts are not solely audit or investigatory work in the context of your questions. These units are considered part of management in carrying out its responsibility to seek methods to improve productivity.

In response to your questions, set forth below is the internal investigation and audit units of the Department and the structure under which they are organized. Also set forth are units in the Department that, while not performing investigation or audit work, assist management in improving operations.

Office of Professional Responsibility

As stated, the obligation of the Office of Professional Responsibility is to review and, where appropriate, investigate allegations of criminal and non-criminal misconduct against Department employees. The head of the Office is the Counsel on Professional Responsibility, who serves as a special reviewing officer and adviser to the Attorney General. The Counsel reports

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directly to the Attorney General and Deputy Attorney General and submits to the Attorney General an annual report reviewing and evaluating the Department's various internal inspection units. The Office has six attorneys, which are supplemented, as necessary, by the attorney, audit and investigative resources of other Department components.

Audit Staff - Justice Management Division

The Audit Staff of JMD is responsible for conducting independent reviews and audits of all Department organizations, programs and functions, as well as undertaking external audits of expenditures made under Department contracts and grants in addition to exercising oversight authority throughout the Department. The Director of the Audit Staff heads the office. There are 86 auditors or other professional staff members carrying out the office's responsibilities. The Director of the Audit Staff reports to the Assistant Attorney General for Administration, except in matters involving JMD, in which case the Director reports to the Deputy Attorney General and the Attorney General.

Policy and Planning Office - Justice Management Division

The Policy and Planning Office of JMD* carries out responsibilities pertaining to the implementation of the President's management improvement and productivity improvement program and those legislative programs aimed at management improvements and cost savings. The office also monitors and reports progress in accomplishing the Department's management and productivity improvement agenda. The Director of the Policy and Planning Office reports to the Assistant Attorney General for Administration. There are 20 professional staff members in the office.

Immigration and Naturalization Service

Office of Professional Responsibility, INS

The Office of Professional Responsibility, INS, investigates allegations of duty-related criminal activity and misconduct by INS employees. The Director reports to the Commissioner of INS, and as with the other components, to the Counsel, OPR. The office has an authorized staff of 102 individuals, including approximately 75 Special Agents.

*The Policy and Planning Office was previously referred to as the Evaluation Staff.

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Office of Program Inspection, INS

The audit, evaluation, and management improvement capabilities of the Office of Program Inspection are carried out by two branches. The Director of the Office of Program Inspection reports to the Commissioner of INS. The Field Inspections and Audit Branch provides the audit capabilities for reviewing the effectiveness of INS programs and operations. The branch is comprised of 10 auditors and other professional staff members. The Evaluation and Management Improvement Branch provides comprehensive management consultant and evaluation services throughout INS. It focuses on assisting management in improving productivity and efficiency and seeks methods to implement cost savings. There are 9 professional staff members in the branch.

Bureau of PrisonsOffice of Inspections, BOP

Internal investigations and oversight relating to audit responsibilities at BOP are carried out by the Office of Inspections. The office is comprised of 8 professionals and the Chief reports to the Director of the BOP. The office is responsible for reviewing and investigating misconduct allegations by BOP employees and ensuring that audits are undertaken and performed in an appropriate manner. With the exception of fiscal operations, audits are conducted by central office and regional administrators. Four professional staff members from the Financial Management Branch at headquarters serve as team leaders for financial audits.

United States Marshals ServiceOffice of Inspections, USMS

The internal investigation and audit responsibilities of the United States Marshals Service are carried out by the Office of Inspections. The office is divided between investigations of allegations of misconduct against USMS employees and the audit of USMS programs and activities. The Office is headed by the Assistant Director for Inspections, who reports to the Director of the USMS. In addition to the Assistant Director, the office is comprised of 3 Chief Inspectors, who supervise the work of the office, 12 auditors or other professional staff members, and 8 criminal investigators.

Federal Bureau of Investigation (FBI)Inspection Division, FBI

The audit and internal investigation responsibilities within the FBI are carried out by the Inspection Division, which is composed of three offices: the Office of Professional

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Responsibility, the Office of Inspections, and the Office of Program Evaluations and Audits. The Inspection Division reviews and investigates allegations of misconduct against FBI employees, performs audits of FBI operations, and evaluates current policies and procedures of the FBI. The Inspection Division is headed by an Assistant Director who reports to the Director, FBI. The Division has two Deputy Assistant Directors, 25 Special Agents and 17 additional professional staff members.

Drug Enforcement Administration

Planning and Inspection Division, DEA

The Planning and Inspection Division of DEA carries out the internal investigation and audit responsibilities of DEA. The Office of Professional Responsibility directs investigations into allegations of misconduct and criminal violations by DEA employees. The Office of Inspections conducts the audits and inspections of DEA activities. The Office of Planning and Evaluation is responsible for agencywide strategic planning, special studies and policy analyses, and the development and maintenance of statistical information systems for all of DEA. The Planning and Inspection Division is headed by an Assistant Administrator who reports to the Administrator of DEA. There are two Deputy Assistant Administrators, 33 Inspectors and 12 additional professional staff members assigned to the Division.

With regard to your question relating to reports of internal investigations and audits, senior management is kept advised on the status of evaluations and investigations. In matters involving misconduct, reports receive limited circulation as any possible prosecution could be jeopardized. Completed audits are submitted to the head of each component and the senior management officials involved. In compliance with Office of Management and Budget Circular A-56, semiannual reports are provided to the head of the agency on audits that are unresolved.

As to your question relating to the rotating of employees, both the Counsel, OPR and the internal investigation units in the Department have the ability to use investigative resources available throughout the Department. This allows the Department to respond to allegations in an independent and expeditious manner. With respect to audit functions, the Bureau of Prisons details individuals to particular projects.

The Department takes seriously its obligation to ensure that allegations of employee misconduct are investigated promptly and handled appropriately. Similarly, the need to evaluate our efficiency and compliance with laws and regulations has required

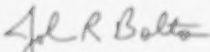
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us to ensure that aggressive audit capabilities are in place. The existing structure ensures that these responsibilities are carried out under the supervision of the highest levels of the Department. We believe that the Department's mechanism is one marked by integrity and effectiveness.

We appreciate the Committee's solicitation of our views.

Sincerely,



John R. Bolton
Assistant Attorney General